

**U.S. ARMY
KWAJALEIN ATOLL**

**SPECIFICATIONS
FOR
FY02 MCA PN50846 COLD STORAGE
FACILITY AND FY01 RDT&E
REPAIR WATER TANKS**



**U.S. Army Corps
of Engineers
HONOLULU DISTRICT**

REQUEST FOR PROPOSAL NO. DACA83-02-R-0003
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Division 1 General Requirements
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Contractor is required to COMPLETE AND RETURN the following sections of this solicitation: SECTION 00010 (ALL), and section 00600 (ALL).

THIS PROCUREMENT IS UNRESTRICTED.

SOLICITATION, OFFER, AND AWARD <i>(Construction, Alteration, or Repair)</i>	1. SOLICITATION NO.	2. TYPE OF SOLICITATION	3. DATE ISSUED	PAGE OF PAGES
	DACA83-02-R-0003	<input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	12/04/01	1 3

IMPORTANT - The "offer" section on the reverse must be fully completed by offeror.

7. ISSUED BY U.S. Army Corps of Engineers Honolulu Engineer District Building 230 Fort Shafter, Hawaii 96858-5440	CODE	8. ADDRESS OFFER TO U.S. Army Corps of Engineers Honolulu Engineer District Building 200, Construction/A-E Contracts Branch Fort Shafter, Hawaii 96858-5440
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9. FOR INFORMATION CALL:	a. NAME Renee M. Hicks	b. TELEPHONE NO. (Include area code) (NO COLLECT CALLS) (808) 438-8567
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SOLICITATION

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid and "bidder".

10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS (Title, identifying no., date)

FY02 MCA PN50846 COLD STORAGE FACILITY AND FY01 RDT&E REPAIR WATER TANKS U.S.ARMY KWAJALEIN ATOLL

(SEE MAIN TOC)

11. The Contractor shall begin performance <u>7</u> calendar days and complete it <u>570</u> calendar days after receiving <input type="checkbox"/> award, <input checked="" type="checkbox"/> notice to proceed. This performance period <input checked="" type="checkbox"/> mandatory <input type="checkbox"/> negotiable. (See _____.)
--

12a. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? (If "YES," indicate within how many calendar days after award in Item 12b). <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	12b. CALENDAR DAYS 14
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13. ADDITIONAL SOLICITATION REQUIREMENTS:

- a. Sealed offers in original _____ copies to perform the work required are due at the place specified in Item 8 2:00 p.m. (HST) local time 03/01/02 (date). If this is a sealed bid solicitation, offers will be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.
- b. An offer guarantee ☒ is, ☐ is not required.
- c. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by
- d. Offers providing less than 60 calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.

OFFER (Must be fully completed by offeror)


14. NAME AND ADDRESS OF OFFEROR (Include ZIP Code)

15. TELEPHONE NO. (Include area code)

16. REMITTANCE ADDRESS (Include only if different than Item 14.)

CODE (CAGE) _____ FACILITY CODE _____

17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of this solicitation, if this offer is accepted by the Government in writing within _____ calendar days after the date offers are due. (Insert any number equal to or greater than the minimum requirement stated in Item 13d. Failure to insert any number means the offeror accepts the minimum in Item 13d.)

AMOUNTS  SEE SECTION 00010, "PROPOSAL SCHEDULE"

18. The offeror agrees to furnish any required performance and payment bonds.

19. ACKNOWLEDGMENT OF AMENDMENTS

(The offeror acknowledges receipt of amendments to the solicitation -- give number and date of each)

AMENDMENT NO.										
DATE.										

20a. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)

20. SIGNATURE

20c. OFFER DATE

AWARD (To be completed by Government)

21. ITEMS ACCEPTED:

22. AMOUNT

23. ACCOUNTING AND APPROPRIATION DATA

24. SUBMIT INVOICES TO ADDRESS SHOWN IN  (4 copies unless otherwise specified)

ITEM

25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO

☐ 10 U.S.C. 2304(c) () ☐ 41 U.S.C. 253(c) ()

26. ADMINISTERED BY

CODE

U.S. Army Corps of Engineers
Honolulu Engineer District
Kwajalein Resident Office
Fort Shafter, Hawaii 96858-5440

27. PAYMENT WILL BE MADE BY

U.S. Army Corps of Engineers
Honolulu Engineer District
Finance & Accounting Officer
Fort Shafter, Hawaii 96858-5440

CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE☐ 28. NEGOTIATED AGREEMENT (Contractor is required to sign this

document and return _____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all work requirements identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications incorporated by reference in or attached to this contract.

☐ 29. AWARD (Contractor is not required to sign this document.) Your offer

on this solicitation is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.

30a. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN (Type or print)

31a. NAME OF CONTRACTING OFFICER (Type or print)

30b. SIGNATURE

30c. DATE

31b. UNITED STATES OF AMERICA

30c. DATE

BY

Request for Proposals No. DACA83-02-R-0003

SECTION 00010
PROPOSAL SCHEDULE

FY02 MCA PN 50846 Cold Storage Facility and
FY01 RDT&E Repair Water Tanks
Kwajalein Atoll, Marshall Island

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	AMOUNT
1.	Construct Cold Storage Facility (Includes\$_____ for Mobilization	1	Job	\$_____
2.	Repair Water Tanks	1	Job	\$_____
TOTAL PROPOSAL SCHEDULE				\$_____

NOTES TO PROPOSAL SCHEDULE:

1. Failure to bid on all the items in the Proposal Schedule
may cause the bid to be considered nonresponsive.

PAYMENT (S)

Compensation for all work to be performed under this contract will be made under the payment item(s) listed herein. The principal features of the Work to be included under the payment item(s) are noted. Work required by the drawings and specifications and not particularly mentioned shall be included in and be paid for under the contract price for the item to which the work pertains. Price(s) and payment(s) for the item(s) shall cover all work, complete and finished in accordance with the specifications, schedules, and drawings, and shall be full compensation for all work in connection therewith, including quality control and cost of performance-and payment-bond premiums as specified in the CONTRACT CLAUSES. Price(s) and payment(s) shall constitute full and final compensation for furnishing all materials, equipment, management, supervision, labor, transportation, fuel, power, water, and all incidental items necessary to complete the work, except as otherwise specified to be furnished by the Government. For the purpose of CONTRACT CLAUSE entitled "PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS", the term "designated billing office" and "designated payment office" are as follows:

a. Billing Office
U.S. Army Corps of Engineers
Kwajalein Resident Office
PO Box 28
APO AP 96555-2528

b. Payment Office .
Central Accounting Office
PO Box 17073
Honolulu, HI 96817

Item numbers mentioned herein after correspond to the item numbers in the PROPOSAL SCHEDULE.

a. Item No. 1, Construct Cold Storage Facility, will be paid for at the contract price, complete in place and ready for use, including site preparation, building, water lines, sanitary-sewer system, storm-drainage system, stone protection work, pavement, concrete sidewalks, curbs, and gutters, security fencing, established of turf, mechanical work, electrical work, installation of Government-furnished property, testing, final connections, cleanup, and all incidental items necessary to complete the work.

b. Item No. 2, Repair Water Tanks, will be paid for at the contract price, complete in place and ready for use, including site preparation, testing, final connections, cleanup, and all incidental items necessary to complete the work.

- End of Section -

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CLAUSES INCORPORATED BY FULL TEXT

52.204-6 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (JUN 99)

(a) Contractor identification is essential for complying with statutory contract reporting requirements. Therefore, the offeror is requested to enter, in the block with its name and address on the Standard Form 33 or similar document, the annotation "DUNS" followed by the DUNS number which identifies the offeror's name and address exactly as stated in the offer.

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. A DUNS number will be provided immediately by telephone at no charge to the offeror. For information on obtaining a DUNS number, the offeror, if located within the United States, should call Dun and Bradstreet at 1-800-333-0505. The offeror should be prepared to provide the following information:

- (1) Company name.
- (2) Company address.
- (3) Company telephone number.
- (4) Line of business.
- (5) Chief executive officer/key manager.
- (6) Date the company was started.
- (7) Number of people employed by the company.
- (8) Company affiliation.

(c) Offerors located outside the United States may obtain the location and phone number of the local Dun and Bradstreet Information Services office from the Internet Home Page at <http://www.customerservice@dnb.com/>. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at globalinfo@dnb.com.

(End of provision)

52.211-2 AVAILABILITY OF SPECIFICATIONS LISTED IN THE DOD INDEX OF SPECIFICATIONS AND STANDARDS (DODISS) AND DESCRIPTIONS LISTED IN THE ACQUISITION MANAGEMENT SYSTEMS AND DATA REQUIREMENTS CONTROL LIST, DOD 5010.12-L (DEC 1999)

Copies of specifications, standards, and data item descriptions cited in this solicitation may be obtained--

- (a) From the ASSIST database via the Internet at <http://assist.daps.mil>; or

(b) By submitting a request to the--Department of Defense Single Stock Point (DoDSSP), Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.

(End of provision)

52.211-14 NOTICE OF PRIORITY RATING FOR NATIONAL DEFENSE USE (SEP 1990)

Any contract awarded as a result of this solicitation will be ____ DX rated order; X DO rated order certified for national defense use under the Defense Priorities and Allocations System (DPAS) (15 CFR 700), and the Contractor will be required to follow all of the requirements of this regulation. [Contracting Officer check appropriate box.]

(End of provision)

52.215-1 INSTRUCTIONS TO OFFERORS--COMPETITIVE ACQUISITION (MAY 2001)

(a) Definitions. As used in this provision--

"Discussions" are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer's discretion, result in the offeror being allowed to revise its proposal.

In writing, writing, or written means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

"Proposal modification" is a change made to a proposal before the solicitation's closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

"Proposal revision" is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

"Time", if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) Amendments to solicitations. If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) Submission, modification, revision, and withdrawal of proposals. (1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal must show--

(i) The solicitation number;

(ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons authorized to negotiate on the offeror's behalf with the Government in connection with this solicitation; and

(v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) Submission, modification, or revision, of proposals.

(i) Offerors are responsible for submitting proposals, and any modifications, or revisions, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii)(A) Any proposal, modification, or revision received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and--

(1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(3) It is the only proposal received.

(B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(v) Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision at 52.215-5, Facsimile Proposals. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the

person requesting withdrawal is established and the person signs a receipt for the proposal before award.

(4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

(5) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless the provision at FAR 52.225-17, Evaluation of Foreign Currency Offers, is included in the solicitation.

(6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) Offer expiration date. Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).

(e) Restriction on disclosure and use of data. Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall--

(1) Mark the title page with the following legend: This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed--in whole or in part--for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of--or in connection with-- the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [insert numbers or other identification of sheets]; and

(2) Mark each sheet of data it wishes to restrict with the following legend: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) Contract award. (1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in FAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(7) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(11) The Government may disclose the following information in postaward debriefings to other offerors:

(i) The overall evaluated cost or price and technical rating of the successful offeror;

(ii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection;

(iii) A summary of the rationale for award; and

(iv) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(End of provision)

52.215-20 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997)—ALTERNATE IV (OCT 1997)

I. Submission of cost or pricing data is not required.

II. Provide information described below: [Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.403-3.]

52.216-1 TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a firm fixed-price contract resulting from this solicitation.

(End of clause)

52.225-12 NOTICE OF BUY AMERICAN ACT/BALANCE OF PAYMENTS PROGRAM
REQUIREMENT-- CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (FEB 2000)

(a) Definitions. Construction material, designated country construction material, domestic construction material, foreign construction material, and NAFTA country construction material, as used in this provision, are defined in the clause of this solicitation entitled "Buy American Act--Balance of Payments Program--Construction Materials under Trade Agreements" (Federal Acquisition Regulation (FAR) clause 52.225-11).

(b) Requests for determination of inapplicability. An offeror requesting a determination regarding the inapplicability of the Buy American Act or Balance of Payments Program should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-11 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act or Balance of Payments Program before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers. (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act or Balance of Payments Program, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause 52.225-11.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) Alternate offers. (1) When an offer includes foreign construction material, other than designated country or NAFTA country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic, designated country, or NAFTA country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic, designated country, or NAFTA country construction material, and the offeror shall be required to furnish such domestic, designated country, or NAFTA country construction material. An offer based on use of the foreign construction material for which an exception was requested--

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

52.233-2 SERVICE OF PROTEST (AUG 1996)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from:

U.S. Army Engineer District, Honolulu
Corps of Engineers, Bldg 230
ATTN: Directorate of Contracting, CEPOH-CT
Fort Shafter, HI 96858-5440

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

52.236-27 SITE VISIT (CONSTRUCTION) (FEB 1995) – ALTERNATE I (FEB 1995)

(a) The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed.

(b) An organized site visit has been scheduled for--
January 9, 2002 (Kwajalein Time)

(c) Participants will meet at--Kwajalein

Due to limited logistical support, only one representative from each firm who has acquired the CD ROM may attend the site visit and preproposal conference. All Contractors that wish to attend MUST contact Mr. Rodney Leong at telephone no. (808)438-6940, facsimile no. (808) 438-8865, or e-mail address rodney.s.leong@poh01.usace.army.mil NO LATER THAN 14 Dec 01. Contractors shall provide full name, social security number, date of birth, place of birth, citizenship, name of company, position/title, home address, confirmation of flight reservations, point of departure, dates of entry and exit, and name of airline carrier to obtain an entry clearance. Contractors may only visit the site on day of the scheduled site visit and preproposal conference. The Government will only respond to questions submitted in writing via amendments to the solicitation. Questions regarding the solicitation should be submitted no later than 9 Jan 02.

52.236-28 PREPARATION OF PROPOSALS--CONSTRUCTION (OCT 1997)

(a) Proposals must be (1) submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing a proposal must initial each erasure or change appearing on any proposal form.

(b) The proposal form may require offerors to submit proposed prices for one or more items on various bases, including--

(1) Lump sum price;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of paragraphs (b)(1) through (b)(3) of this provision.

(c) If the solicitation requires submission of a proposal on all items, failure to do so may result in the proposal being rejected without further consideration. If a proposal on all items is not required, offerors should insert the words "no proposal" in the space provided for any item on which no price is submitted.

(d) Alternate proposals will not be considered unless this solicitation authorizes their submission.

(End of provision)

S-36.4 PRE-PROPOSAL CONFERENCE (JUL 1995)

a. A pre-proposal conference will be conducted by the Government on January 9, 2002 (Kwajalein time) in Kwajalein. All planholders (prime contractors, subcontractors, and suppliers) are urged to attend this conference. Planholders who plan to attend should notify the Government of the number of attendees before the date of the conference. Notification can be made as follows:

(1) Telephone: Insert phone no.
Point of Contact: Insert POC

(2) Mail: U.S. Army Engineer District, Honolulu
Corps of Engineers, Bldg 230
ATTN: Rodney Leong (808)438-6940
Fort Shafter, Hawaii 96858-5440

Due to limited logistical support, only one representative from each firm who has acquired the CD ROM may attend the site visit and preproposal conference. All Contractors that wish to attend MUST contact Mr. Rodney Leong at telephone no. (808)438-6940, facsimile no. (808) 438-8865, or e-mail address rodney.s.leong@poh01.usace.army.mil NO LATER THAN 14 Dec 01. Contractors shall provide full name, social security number, date of birth, place of birth, citizenship, name of company, position/title, home address, confirmation of flight reservations, point of departure, dates of entry and exit, and name of airline carrier to obtain an entry clearance. Contractors may only visit the site on day of the scheduled site visit and preproposal conference. The Government will only respond to questions submitted in writing via amendments to the solicitation. Questions regarding the solicitation should be submitted no later than 9 Jan 02.

b. Any questions planholders may have concerning the project, plans, or specifications should be submitted in writing, on letterhead stationery, sufficiently in advance of the conference, to permit preparation of answers, which will be provided at the conference. The questions should be faxed as soon as possible, and followed by an original through mail. Use the facsimile number and address shown in paragraph a. above. During the conference, written, signed questions will be accepted, and will be answered during the conference if time permits.

c. A complete record of the conference, including questions raised by planholders and answers provided by the Government, will be made and a copy furnished to all planholders. However, any answer, clarification, or explanation given at the conference will not qualify or change the terms of the request for proposal (including the plans and specifications). Unless the request for proposal is amended in writing, it will remain unchanged. If an amendment to the request for proposal is

issued as a result of the conference, normal procedures relating to issuance and acknowledgement of receipt will apply.

d. All costs incurred to attend and participate in the pre-proposal conference and any site visits (see paragraph e. below) will be at the expense of the planholder. This includes, but is not limited to, the cost of transportation, per diem, and hotel accommodations.

e. Refer to provision entitled SITE VISIT (CONSTRUCTION) in Section 00100 for information on the pre-proposal site visit.

[End of Statement]

S-36.2 MAGNITUDE OF THE PROPOSED PROJECT [FAR 36.204]

(a) Physical Characteristics: FY02 MCA, Cold Storage Facility, and FY01 RDT&E Repair Water Tanks, Kwajalein, U.S. Army Kwajalein Atoll. The work for FY02 MCA PN 50846, Cold Storage Facility is to construct a 22,000 SF, 315,000 CF cold storage warehouse, having two freezer and five chilled rooms with racking, and a contiguous ice plant. Supporting facilities include utilities, fire protection and alarm systems; paving, walks, curbs and gutters; storm drainage; information systems; and site improvements. Refrigeration load: 200 tons. Air conditioning: 20 tons. Demolish three buildings (112,100 CF) with asbestos abatement. The work for FY01 RDT&E, Repair Water Tanks, is to perform all work necessary to repair three existing 1 million gallon concrete water storage tanks (Facility Nos. 946, 947, 966), including piping. Contractors may visit the site subject to a two-week prior approval by the Commander, U.S. Army Kwajalein Atoll and proper entry clearance.

(b) Estimated Price Range: The estimated price range of this work is: between \$25,000,000 and \$100,000,000.

[End of Statement]

S-28.3 PENAL SUM AND FORM OF OFFER GUARANTEE

(Applicable to offers exceeding \$100,000)

Each offeror shall submit with its offer a separate offer guarantee using Standard Form 24, Bid Bond, with good and sufficient surety or sureties acceptable to the Government, or other security as provided in the clause entitled OFFER GUARANTEE in the CONTRACT CLAUSES section. This security shall be in the form of twenty percent (20%) of the offered price or three million dollars (\$3,000,000), whichever is less. The penal sum of the bond may be expressed in terms of a percentage of the offered price or may be expressed in dollars and cents.

Failure to submit a offer guarantee by the time and date set for receipt of proposals may be cause for rejection of a proposal, except as provided in provision 52.215-1, Instructions to Offerors--Competitive Acquisition.

[End of Statement]

K-2 RESTRICTIONS ON AWARD

(a) In view of stringent security considerations at Kwajalein Atoll, a contract under this solicitation shall be awarded only to a United States contractor or to a Marshall Islands contractor.

(b) Definitions. The following terms, as used in this clause only, shall have the following meanings:

(1) "Person" means an individual.

(2) "Firm" means a corporation or partnership.

(3) "Joint Venture" means more than one firm and/or person agreeing to submit a joint proposal under this solicitation.

(4) "United States" means the 50 states, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and possessions as defined in FAR 2.101.

(5) "State" means any of the 50 States, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, or Guam.

(c) To qualify as a United States or Marshall Islands contractor, a person must be a citizen of the United States or the Republic of the Marshall Islands and, at the time of submitting a proposal under this solicitation, must comply with all of the following:

(1) At least 80 percent of the principal management personnel employed in the United States and/or the Marshall Islands by that person shall be citizens of the United States or the Republic of the Marshall Islands;

(2) More than half of the permanent full time personnel employed in the United States and/or the Marshall Islands by that person shall be citizens of the United States or the Republic of the Marshall Islands; and

(d) To qualify as a United States or Marshall Islands contractor, a firm must be incorporated in or organized under the laws of a State or the Republic of the Marshall Islands and, at the time of submitting a proposal under this solicitation, must comply with all of the following:

(1) The firm's principal place of business and headquarters shall have been in the United States or the Republic of the Marshall Islands for a minimum of two calendar years immediately preceding this solicitation;

(2) Tax returns, if required, shall have been filed by that firm in the United States or in the Republic of the Marshall Islands for a minimum of two tax years immediately preceding this solicitation;

(3) For a minimum of two full years immediately preceding the issuance of this solicitation (i) if that firm is a corporation, a continuous majority of the corporate officers shall have been citizens of the United States or the Republic of the Marshall Islands, or (ii) if that firm is a partnership, all of the general partners shall have been citizens of the United States or the Republic of the Marshall Islands, or shall have been incorporated in or organized under the laws of a State or the Republic of the Marshall Islands and shall meet all the requirements of (d) (1), (d) (2) and (d) (3) (i) above and (d) (5) below.

(4) That firm must employ citizens of the United States or the Republic of the Marshall Islands in at least 80 percent of its principal management positions in the United States and/or in the Marshall Islands; and

(5) That firm must employ citizens of the United States or the Republic of the Marshall Islands in more than half of its permanent, full-time positions in the United States and/or in the Marshall Islands.

(e) For a joint venture to qualify as a United States or Marshall Island contractor, each member of the joint venture must meet all the requirements set out in (c) or (d) above, as appropriate.

(f) In addition, to qualify for award of a contract under this solicitation, a firm or person must have proven, as indicated by prior contracting experience in the United States and/or in the Marshall Islands, that it possesses the technical, managerial, and financial capability to successfully complete a project similar in nature and technical complexity to that described in this solicitation; and it must presently possess the technical, managerial and financial resources in the United States and/or in the Marshall Islands to perform the contract.

(g) Nothing in this provision shall be construed to prohibit award to a joint venture between United States and Marshall Islands contractors, so long as each member of the joint venture meets the criteria otherwise required by this provision.

[End of Statement]

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SECTION 00600 Representations & Certifications

CLAUSES INCORPORATED BY FULL TEXT

52.203-2 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985)

(a) The offeror certifies that --

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods of factors used to calculate the prices offered:

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory --

(1) Is the person in the offeror's organization responsible for determining the prices offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contradictory to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as an agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above

_____ (insert full name of person(s)
in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization);

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

(End of clause)

52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on

Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this Certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989,--

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(End of provision)

52.204-3 TAXPAYER IDENTIFICATION (OCT 1998)

(a) Definitions.

Common parent, as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

Taxpayer Identification Number (TIN), as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(d) Taxpayer Identification Number (TIN).

___ TIN:-----

___ TIN has been applied for.

___ TIN is not required because:

___ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

___ Offeror is an agency or instrumentality of a foreign government;

___ Offeror is an agency or instrumentality of the Federal Government.

(e) Type of organization.

___ Sole proprietorship;

___ Partnership;

___ Corporate entity (not tax-exempt);

___ Corporate entity (tax-exempt);

___ Government entity (Federal, State, or local);

___ Foreign government;

___ International organization per 26 CFR 1.6049-4;

___ Other-----

(f) Common parent.

___ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

___ Name and TIN of common parent:

Name-----

TIN-----

(End of provision)

52.204-5 WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS) (MAY 1999)

(a) Definition. Women-owned business concern, as used in this provision, means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) Representation. [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR 52.219-1, Small Business Program Representations, of this solicitation.] The offeror represents that it () is a women-owned business concern.

(End of provision)

52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (APR 2001)

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that--

(i) The Offeror and/or any of its Principals--

(A) Are () are not () presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have () have not (), within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are () are not () presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

(ii) The Offeror has () has not (), within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(D) Have () have not (), within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(E) Are () are not () presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(D) of this provision.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)

252.209-7001 DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)

(a) "Definitions."

As used in this provision --

(a) "Government of a terrorist country" includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) "Terrorist country" means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for such acts of international terrorism. As of the date of this provision, terrorist countries include: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) "Significant interest" means --

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as a director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(b) "Prohibition on award."

In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or a subsidiary of a firm

if the government of a terrorist country has a significant interest in the firm or subsidiary or, in the case of a subsidiary, the firm that owns the subsidiary, unless a waiver is granted by the Secretary of Defense.

(c) "Disclosure."

If the government of a terrorist country has a significant interest in the Offeror or a subsidiary of the Offeror, the Offeror shall disclose such interest in an attachment to its offer. If the Offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary. The disclosure shall include --

(1) Identification of each government holding a significant interest; and

(2) A description of the significant interest held by each government.

(End of provision)

252.209-7003 COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (MAR 1998)

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 37 U.S.C. 4212(d) (i.e., the VETS-100 report required by Federal Acquisition Regulation clause 52.222-37, Employment Reports on Disabled Veterans and Veterans of the Vietnam Era), it has submitted the most recent report required by 38 U.S.C. 4212(d).

52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)

The offeror represents that --

(a) ☐ It has, ☐ has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;

(b) ☐ It has, ☐ has not, filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(End of provision)

52.223-13 CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING (OCT 2000)

(a) Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 12969, August 8, 1995.

(b) By signing this offer, the offeror certifies that--

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: (Check each block that is applicable.)

☐ (i) The facility does not manufacture, process or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

☐ (ii) The facility does not have 10 or more full-time employees as specified in section 313.(b)(1)(A) of EPCRA 42 U.S.C. 11023(b)(1)(A);

☐ (iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

☐ (iv) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

☐ (v) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

252.225-7017 PROHIBITION ON AWARD TO COMPANIES OWNED BY THE PEOPLE'S REPUBLIC OF CHINA (FEB 2000)

(a) Definition. "People's Republic of China," as used in this provision, means the government of the People's Republic of China, including its political subdivisions, agencies, and instrumentalities.

(b) Prohibition on award. Section 8120 of the Department of Defense Appropriations Act for fiscal year 1999 (Pub. L. 105-262), as amended by Section 144 of Title I, Division C, of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105-277), prohibits the award of a contract under this solicitation to any company in which the Director of Defense Procurement (Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)) has determined that the People's Republic of China or the People's Liberation Army of the People's Republic of China owns more than 50 percent interest.

(c) Representation. By submission of an offer, the offeror represents that the People's Republic of China or the People's Liberation Army of the People's Republic of China does not own more than 50 percent interest in the offeror.

(End of provision)

252.236-7012 MILITARY CONSTRUCTION ON KWAJALEIN ATOLL--EVALUATION PREFERENCE (MAR 1998)

(a) Definitions. As used in this provision--

(1) Marshallese firm means a local firm incorporated in the Marshall Islands, or otherwise legally organized under the laws of the Marshall Islands, that--

(i) Is more than 50 percent owned by citizens of the Marshall Islands; or

(ii) Complies with the following:

(A) The firm has done business in the Marshall Islands on a continuing basis for not less than 3 years prior to the date of issuance of this solicitation;

(B) Substantially all of the firm's directors of local operations, senior staff, and operating personnel are resident in the Marshall Islands or are U.S. citizens; and

(C) Most of the operating equipment and physical plant are in the Marshall Islands.

(2) United States firm means a firm incorporated in the United States that complies with the following:

(i) The corporate headquarters are in the United States;

(ii) The firm has filed corporate and employment tax returns in the United States for a minimum of 2 years (if required), has filed State and Federal income tax returns (if required) for 2 years, and has paid any taxes due as a result of these filings; and

(iii) The firm employs United States citizens in key management positions.

(b) Evaluation. Offers from firms that do not qualify as United States firms or Marshallese firms will be evaluated by adding 20 percent to the offer, unless application of the factor would not result in award to a United States firm.

(c) Status. The offeror is _____ a United States firm; _____ a Marshallese firm; _____ Other.

252.247-7022 REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA (AUG 1992)

(a) The Offeror shall indicate by checking the appropriate blank in paragraph (b) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term supplies is defined in the Transportation of Supplies by Sea clause of this solicitation.

(b) Representation. The Offeror represents that it:

____ (1) Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

____ (2) Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(c) Any contract resulting from this solicitation will include the Transportation of Supplies by Sea clause. If the Offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense FAR Supplement clause at 252.247-7024, Notification of Transportation of Supplies by Sea.

(End of provision)

S-7 IDENTIFICATION OF PARTNERS

(Applicable where the offeror has identified itself as a partnership or joint venture.)

The full names of all partners are listed below:

[End of Statement]

S-28.5 IDENTIFICATION OF BID GUARANTEE

(Applicable if bid/offer exceeds \$100,000)

A bid guarantee, consisting of _____, in the
amount of _____ is enclosed with this offer.

(SPECIFY THE TYPE AND THE AMOUNT OF THE BID GUARANTEE SUBMITTED.)

[End of Statement]

APPENDIX A

Approved by
OM
0348-0046

[illegible]

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individuals(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET**

Approved by
OM
0348-0046

Reporting Entity: _____ Page _____ of _____

PRICE BREAKDOWN - PART 1

ITEM NO.	DESCRIPTION (Brief)	TOTAL DIRECT LABOR MANHOURS	COST	TOTAL EQUIPMENT COST	TOTAL MATERIAL (INCL SHIP) COST	SUBCONTRACTOR COST	TOTAL DIRECT COST
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1. Cold Storage Facility

Direct Cost Subtotals			\$	\$	\$	\$	\$
Distributed Mobilization and Demobilization							\$
Distributed Camp Facilities							\$
Distributed Site Indirect Costs							\$
Distributed Home Office Overhead							\$
Profit							\$
TOTAL							\$

EXHIBIT 1

PRICE BREAKDOWN - PART 2

SUMMARY BY CSI DIVISION

Item No. 1. Cold Storage Facility

CSI DIV	DESCRIPTION	TOTAL LABOR MANHOUR	COST	TOTAL EQUIPMENT	TOTAL MATERIAL SHIP TONS	SHIP COST	SUBCONTRACTOR COST	TOTAL CSI DIVISION COST
02	SITE WORK							
03	CONCRETE							
04	MASONRY							
05	METALS							
06	WOOD & PLASTIC							
07	THERMAL & MOISTURE PROTECTION							
08	DOORS & WINDOWS							
09	FINISHES							
10	SPECIALTIES							
11	EQUIPMENT							
12	FURNISHINGS							
13	SPECIAL CONSTRUCTION							
14	CONVEYING SYSTEMS							
15	MECHANICAL							
16	ELECTRICAL							

TOTAL DIRECT

EXHIBIT 2

PRICE BREAKDOWN PART 3

SUBCONTRACTED WORK ONLY

SUMMARY BY CSI DIVISION

Item No. Cold Storage Facility

CSI DIV	DESCRIPTION	TOTAL LABOR MANHOUR	COST	TOTAL EQUIPMENT	MATERIAL	TOTAL MATERIAL SHIP TONS	SHIP COST	SUBCONTRACTOR MARK-UP	TOTAL CSI DIVISION COST
02	SITE WORK								
03	CONCRETE								
04	MASONRY								
05	METALS								
06	WOOD & PLASTIC								
07	THERMAL & MOISTURE PROTECTION								
08	DOORS & WINDOWS								
09	FINISHES								
10	SPECIALTIES								
11	EQUIPMENT								
12	FURNISHINGS								
13	SPECIAL CONSTRUCTION								
14	CONVEYING SYSTEMS								
15	MECHANICAL								
16	ELECTRICAL								

TOTAL

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SECTION 00700 Contract Clauses

CLAUSES INCORPORATED BY FULL TEXT

252.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)

(a) "Definition. Contracting officer's representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

(End of clause)

52.202-1 DEFINITIONS (MAY 2001) --ALTERNATE I (MAY 2001)

(a) Agency head or head of the agency means the Secretary (Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, unless otherwise indicated, including any deputy or assistant chief official of the executive agency.

(b) "Commercial component" means any component that is a commercial item.

(c) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

(d) Component means any item supplied to the Government as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225-11(a).

(e) Contracting Officer means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(f) Nondevelopmental item means--

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (f)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraph (f)(1) or (f)(2) solely because the item is not yet in use.

(End of clause)

52.203-3 GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled--

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

52.203-7 ANTI-KICKBACK PROCEDURES. (JUL 1995)

(a) Definitions.

"Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime Contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from -

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold, from sums

owed a subcontractor under the prime contract, the amount of any kickback. The Contracting Officer may order the monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may--

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which--

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27 (a) or (b) of the Act for the purpose of either--

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct constituting an offense punishable under subsections 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of subsection 27 (a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be--

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;

(3) For cost-plus-award-fee contracts--

- (i) The base fee established in the contract at the time of contract award;
 - (ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.
- (4) For fixed-price-incentive contracts, the Government may--
- (i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
 - (ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.
- (5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.
- (c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.
 - (d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)

(a) Definitions.

"Agency," as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

- (1) The awarding of any Federal contract.
- (2) The making of any Federal grant.
- (3) The making of any Federal loan.
- (4) The entering into of any cooperative agreement.
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.
- (3) A special Government employee, as defined in section 202, title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or

instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

(1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action--

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) Professional and technical services.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of--

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure.

(1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes--

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) Agreement. The Contractor agrees not to make any payment prohibited by this clause.

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(End of clause)

252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE- CONTRACT-RELATED FELONIES (MAR 1999)

(a) Definitions. As used in this clause—

(1) “Arising out of a contract with the DoD” means any act in connection with—

(i) Attempting to obtain;

(ii) Obtaining, or

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) “Conviction of fraud or any other felony” means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which sentence has been imposed.

- (3) "Date of conviction" means the date judgment was entered against the individual.
- (b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving--
- (1) In a management or supervisory capacity on any DoD contract or first-tier subcontract;
 - (2) On the board of directors of any DoD contractor or first-tier subcontractor;
 - (3) As a consultant, agent, or representative for any DoD contractor or first-tier subcontractor; or
 - (4) In any other capacity with the authority to influence, advise, or control the decisions of any DoD contractor or subcontractor with regard to any DoD contract or first-tier subcontract.
- (c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.
- (d) 10 U.S.C. 2408 provides that a defense contractor or first-tier subcontractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly—
- (1) Employing a person under a prohibition specified in paragraph (b) of this clause; or
 - (2) Allowing such a person to serve on the board of directors of the contractor or first-tier subcontractor.
- (e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as—
- (1) Suspension or debarment;
 - (2) Cancellation of the contract at no cost to the Government; or
 - (3) Termination of the contract for default.
- (f) The Contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify—
- (1) The person involved;
 - (2) The nature of the conviction and resultant sentence or punishment imposed;
 - (3) The reasons for the requested waiver; and
 - (4) An explanation of why a waiver is in the interest of national security.
- (g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation, except those for commercial items or components.
- (h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone (202) 616-3507.

(End of clause)

52.204-4 PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)

(a) Definitions. As used in this clause--

Postconsumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material." For paper and paper products, postconsumer material means "postconsumer fiber" defined by the U.S. Environmental Protection Agency (EPA) as--

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

Printed or copied double-sided means printing or reproducing a document so that information is on both sides of a sheet of paper.

Recovered material, for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as "recovered fiber" and means the following materials:

(1) Postconsumer fiber; and

(2) Manufacturing wastes such as--

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

(b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.

(c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

(End of clause)

252.204-7000 DISCLOSURE OF INFORMATION (DEC 1991)

(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless--

(1) The Contracting Officer has given prior written approval; or

(2) The information is otherwise in the public domain before the date of release.

(b) Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least 45 days before the proposed date for release.

(c) The Contractor agrees to include a similar requirement in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.

(End of clause)

252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the contractor.

(End of clause)

252.204-7004 REQUIRED CENTRAL CONTRACTOR REGISTRATION.(NOV 2001)

(a) Definitions.

As used in this clause--

(1) Central Contractor Registration (CCR) database means the primary DoD repository for contractor information required for the conduct of business with DoD.

(2) Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.

(3) Data Universal Numbering System +4 (DUNS+4) number means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned by a parent (controlling) business concern. This 4-digit suffix may be assigned at the discretion of the parent business concern for such purposes as identifying subunits or affiliates of the parent business concern.

(4) Registered in the CCR database means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding Commercial and Government Entity (CAGE) code, is in the CCR database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of

any contract resulting from this solicitation, except for awards to foreign vendors for work to be performed outside the United States.

(2) The offeror shall provide its DUNS or, if applicable, its DUNS+4 number with its offer, which will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.

(3) Lack of registration in the CCR database will make an offeror ineligible for award.

(4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.

(c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.

(d) Offerors and contractors may obtain information on registration and annual confirmation requirements by calling 1-888-227-2423, or via the Internet at <http://www.ccr.com>.

(End of clause)

252.205-7000 PROVISION OF INFORMATION TO COOPERATIVE AGREEMENT HOLDERS (DEC 1991)

(a) Definition.

"Cooperative agreement holder" means a State or local government; a private, nonprofit organization; a tribal organization (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-268; 25 U.S.C. 450 (c))); or an economic enterprise (as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93-362; 25 U.S.C. 1452(e))) whether such economic enterprise is organized for profit or nonprofit purposes; which has an agreement with the Defense Logistics Agency to furnish procurement technical assistance to business entities.

(b) The Contractor shall provide cooperative agreement holders, upon their request, with a list of those appropriate employees or offices responsible for entering into subcontracts under defense contracts. The list shall include the business address, telephone number, and area of responsibility of each employee or office.

(c) The Contractor need not provide the listing to a particular cooperative agreement holder more frequently than once a year.

(End of clause)

52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)

(a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of the \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principles, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(End of clause)

252.209-7000 ACQUISITION FROM SUBCONTRACTORS SUBJECT TO ONSITE INSPECTION UNDER THE INTERMEDIATE-RANGE NUCLEAR FORCES (INF) TREATY (NOV 1995)

(a) The Contractor shall not deny consideration for a subcontract award under this contract to a potential subcontractor subject to on-site inspection under the INF Treaty, or a similar treaty, solely or in part because of the actual or potential presence of Soviet inspectors at the subcontractor's facility, unless the decision is approved by the Contracting Officer.

(b) The Contractor shall incorporate this clause, including this paragraph (b), in all solicitations and contracts exceeding the simplified acquisition threshold in part 13 of the Federal Acquisition Regulation, except those for commercial items.

252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of \$25,000 with a firm, or subsidiary of a firm, that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the name of the proposed subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

52.211-10 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984)

The Contractor shall be required to (a) commence work under this contract within seven (7) (Contracting Officer insert number) calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than five hundred seventy (570) calendar days. The time stated for completion shall include final cleanup of the premises.

(End of clause)

52.211-12 LIQUIDATED DAMAGES--CONSTRUCTION (SEP 2000)

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of \$ [Contracting Officer insert amount] for each calendar day of delay until the work is completed or accepted.

(b) If the Government terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(End of clause)

52.211-12 LIQUIDATED DAMAGES--CONSTRUCTION (APR 1984)--ALTERNATE I (APR 1984)

(a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, the Contractor shall pay to the Government as liquidated damages, the sum of \$405.00 for delay of each separate part or stage of the work.

(b) If the Government terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

(c) If the Government does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

(End of clause)

52.211-13 TIME EXTENSIONS (SEP 2000)

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

(End of clause)

52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (SEP 1990)

This is a rated order certified for national defense use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700).

(End of clause)

52.215-2 AUDIT AND RECORDS--NEGOTIATION (JUN 1999)

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) Examination of costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) Cost or pricing data. If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to--

- (1) The proposal for the contract, subcontract, or modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the contract, subcontract, or modification; or
- (4) Performance of the contract, subcontract or modification.

(d) Comptroller General--(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(f) Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition--

- (1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
- (2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation,

or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and--

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(End of clause)

52.215-11 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA--MODIFICATIONS (OCT 1997)

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, except that this clause does not apply to any modification if an exception under FAR 15.403-1 applies.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which--

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if--

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if--

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid--

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

52.215-13 SUBCONTRACTOR COST OR PRICING DATA--MODIFICATIONS (OCT 1997)

(a) The requirements of paragraphs (b) and (c) of this clause shall--

(1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4; and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this

clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

52.215-21 REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA--MODIFICATIONS (OCT 1997)

(a) Exceptions from cost or pricing data. (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.403-4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable--

(i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) Information on modifications of contracts or subcontracts for commercial items. (A) If--

(1) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and

(2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include--

(1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) Requirements for cost or pricing data. If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data and supporting attachments in accordance with Table 15-2 of FAR 15.408.

As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

252.215-7000 PRICING ADJUSTMENTS (DEC 1991)

The term "pricing adjustment," as used in paragraph (a) of the clauses entitled "Price Reduction for Defective Cost or Pricing Data - Modifications," "Subcontractor Cost or Pricing Data," and "Subcontractor Cost or Pricing Data - Modifications," means the aggregate increases and/or decreases in cost plus applicable profits.

52.222-3 CONVICT LABOR (AUG 1996)

The Contractor agrees not to employ in the performance of this contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the Contractor in the performance of this contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the Contractor in the performance of this contract of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if--

(a)(1) The worker is paid or is in an approved work training program on a voluntary basis;

(2) Representatives of local union central bodies or similar labor union organizations have been consulted;

(3) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and

(4) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(b) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

(End of clause)

52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

52.222-21 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(a) Segregated facilities, as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

(End of clause)

52.222-26 EQUAL OPPORTUNITY (FEB 1999)

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) of this clause. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performing this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments

under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)

(a) Definitions. "Covered area," as used in this clause, means the geographical area described in the solicitation for this contract.

"Deputy Assistant Secretary," as used in this clause, means Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

"Employer's identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.

"Minority," as used in this clause, means--

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

(d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals

working at these sites or facilities.

(2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

(4) Immediately notify the Deputy Assistant Secretary when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) of this clause.

(6) Disseminate the Contractor's equal employment policy by--

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

(iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

(7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month

before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.

(11) Validate all tests and other selection requirements where required under 41 CFR 60-3.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user rest rooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

(15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.

(h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16) of this clause. The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16) of this clause, provided the Contractor--

(1) Actively participates in the group;

(2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;

(3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;

(4) Makes a good-faith effort to meet its individual goals and timetables; and

(5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(j) The Contractor shall not use goals or affirmative action standards to discriminate against any person

because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

(m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to--

(1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;

(2) Submit reports as may be required by the Government; and

(3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

52.222-29 NOTIFICATION OF VISA DENIAL (FEB 1999)

It is a violation of Executive Order 11246, as amended, for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, on the basis that the individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where the work is to be performed or for whom the work will be performed (41 CFR 60-1.10). The Contractor agrees to notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW, Room 7325, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country in which the Contractor is required to perform this contract, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee.

(End of clause)

52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)

(a)) Definitions. As used in this clause--

All employment openings includes all positions except executive and top management, those positions that will be filled from within the contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

Appropriate office of the State employment service system means the local office of the Federal-State national system of public employment offices with assigned responsibility to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

Positions that will be filled from within the Contractor's organization means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

Veteran of the Vietnam era means a person who--

(1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(b) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or a veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as--

(i) Employment;

(ii) Upgrading;

(iii) Demotion or transfer;

(iv) Recruitment;

(v) Advertising;

(vi) Layoff or termination;

(vii) Rates of pay or other forms of compensation; and

(viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing openings. (1) The Contractor agrees to list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any

Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their employment openings with the appropriate office of the State employment service.

(3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(d) Applicability. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(e) Postings. (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam Era.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(End of clause)

52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(a) General. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as--

- (i) Recruitment, advertising, and job application procedures;
- (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- (iii) Rates of pay or any other form of compensation and changes in compensation;
- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (v) Leaves of absence, sick leave, or any other leave;
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
- (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (viii) Activities sponsored by the Contractor, including social or recreational programs; and
- (ix) Any other term, condition, or privilege of employment.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings. (1) The Contractor agrees to post employment notices stating--

(i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(End of clause)

52.222-37 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on--

(1) The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date: (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or (2) as of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

(End of clause)

52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)

(a) "Hazardous material", as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material	Identification No.
(If none, insert "None")	

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to--

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

(End of clause)

52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (APR 1998)

(a) Executive Order 12856 of August 3, 1993, requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA)(42 U.S.C. 11001-11050) and the Pollution Prevention Act of 1990 (PPA)(42 U.S.C. 13101-13109).

(b) The Contractor shall provide all information needed by the Federal facility to comply with the emergency planning reporting requirements of Section 302 of EPCRA; the emergency notice

requirements of Section 304 of EPCRA; the list of Material Safety Data Sheets required by Section 311 of EPCRA; the emergency and hazardous chemical inventory forms of Section 312 of EPCRA; the toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA; and the toxic chemical reduction goals requirements of Section 3-302 of Executive Order 12856.

252.223-7001 HAZARD WARNING LABELS (DEC 1991)

(a) "Hazardous material," as used in this clause, is defined in the Hazardous Material Identification and Material Safety Data clause of this contract.

(b) The Contractor shall label the item package (unit container) of any hazardous material to be delivered under this contract in accordance with the Hazard Communication Standard (29 CFR 1910.1200 et seq). The Standard requires that the hazard warning label conform to the requirements of the standard unless the material is otherwise subject to the labeling requirements of one of the following statutes:

(1) Federal Insecticide, Fungicide and Rodenticide Act;

(2) Federal Food, Drug and Cosmetics Act;

(3) Consumer Product Safety Act;

(4) Federal Hazardous Substances Act; or

(5) Federal Alcohol Administration Act.

(c) The Offeror shall list which hazardous material listed in the Hazardous Material Identification and Material Safety Data clause of this contract will be labeled in accordance with one of the Acts in paragraphs (b)(1) through

(5) of this clause instead of the Hazard Communication Standard. Any hazardous material not listed will be interpreted to mean that a label is required in accordance with the Hazard Communication Standard.

MATERIAL (If None, Insert "None.")

ACT

(d) The apparently successful Offeror agrees to submit, before award, a copy of the hazard warning label for all hazardous materials not listed in paragraph (c) of this clause. The Offeror shall submit the label with the Material Safety Data Sheet being furnished under the Hazardous Material Identification and Material Safety Data clause of this contract.

(e) The Contractor shall also comply with MIL-STD-129, Marking for Shipment and Storage (including revisions adopted during the term of this contract).

(End of clause)

252.223-7006 PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (APR 1993)

(a) "Definitions".

As used in this clause --

(1) "Storage" means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Department of Defense (DoD) items, equipment, or facilities.

(2) "Toxic or hazardous materials" means:

(i) Materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of CERCLA (42 U.S.C. 9602) (40 CFR part 302);

(ii) Materials that are of an explosive, flammable, or pyrotechnic nature; or

(iii) Materials otherwise identified by the Secretary of Defense as specified in DoD regulations.

(b) In accordance with 10 U.S.C. 2692, the Contractor is prohibited from storing or disposing of non-DoD-owned toxic or hazardous materials on a DoD installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense or his designee.

(End of clause)

52.225-11 BUY AMERICAN ACT--BALANCE OF PAYMENTS PROGRAM--CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (FEB 2000)

(a) Definitions. As used in this clause--

Component means any article, material, or supply incorporated directly into construction materials.

Construction material means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

Cost of components means--

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

Designated country means any of the following countries: Aruba, Austria, Bangladesh, Belgium, Benin, Bhutan, Botswana, Burkina Faso, Burundi, Canada, Cape Verde, Central African Republic, Chad, Comoros, Denmark.

Djibouti, Equatorial Guinea, Finland, France, Gambia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Hong Kong, Ireland, Israel, Italy, Japan.

Kiribati, Korea, Republic of, Lesotho, Liechtenstein, Luxembourg, Malawi, Maldives, Mali, Mozambique, Nepal, Netherlands, Niger, Norway, Portugal, Rwanda.

Sao Tome and Principe, Sierra Leone, Singapore, Somalia, Spain, Sweden, Switzerland, Tanzania U.R., Togo, Tuvalu, Uganda, United Kingdom, Vanuatu, Western Samoa, Yemen.

Designated country construction material means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a designated country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.

Domestic construction material means--

- (1) An unmanufactured construction material mined or produced in the United States; or
- (2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

Foreign construction material means a construction material other than a domestic construction material.

North American Free Trade Agreement country means Canada or Mexico.

North American Free Trade Agreement country construction material means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a North American Free Trade Agreement (NAFTA) country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different construction material distinct from the materials from which it was transformed.

United States means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) Construction materials. (1) This clause implements the Buy American Act (41 U.S.C. 10a-10d) and the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act and the North American Free Trade Agreement (NAFTA) apply to this acquisition. Therefore, the Buy American Act and Balance of Payments Program restrictions are waived for designated country and NAFTA country construction materials.

(2) The Contractor shall use only domestic, designated country, or NAFTA country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows: (i) Articles determined to be nonavailable listed at FAR 25.104 or DFARS 225.104. (ii) Construction Materials listed in Clause K-24, Section 00800 of this solicitation.

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that--

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent. For determination of unreasonable cost under the Balance of Payments Program, the Contracting Officer will use a factor of 50 percent;

(ii) The application of the restriction of the Buy American Act or Balance of Payments Program to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American Act or Balance of Payments Program.

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including--

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act or Balance of Payments Program applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act or Balance of Payments Program applies, use of foreign construction material is noncompliant with the Buy American Act or Balance of Payments Program.

(d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (dollars) \1\
Item 1:			
Foreign construction material....			
Domestic construction material...			
Item 2:			
Foreign construction material....			
Domestic construction material...			

\1\ Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).

List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

(End of clause)

52.225-13 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUL 2000)

(a) The Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the government of Iraq.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

(End of clause)

252.225-7031 SECONDARY ARAB BOYCOTT OF ISRAEL (JUN 1992)

(a) Definitions. As used in this clause--

(1) "Foreign person" means any person other than a United States person as defined in Section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec 2415).

(2) "United States person" is defined in Section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent

domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concerns, as determined under regulations of the President.

(b) Certification. By submitting this offer, the Offeror, if a foreign person, company or entity, certifies that it--

(1) Does not comply with the Secondary Arab Boycott of Israel; and

(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. Sec 2407(a) prohibits a United States person from taking.

(End of clause)

252.227-7033 RIGHTS IN SHOP DRAWINGS (APR 1966)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower-tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

52.228-2 ADDITIONAL BOND SECURITY (OCT 1997)

The Contractor shall promptly furnish additional security required to protect the Government and persons supplying labor or materials under this contract if--

(a) Any surety upon any bond, or issuing financial institution for other security, furnished with this contract becomes unacceptable to the Government.

(b) Any surety fails to furnish reports on its financial condition as required by the Government;

(c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer; or

(d) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security. If the Contractor does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the Contracting officer has the right to immediately draw on the ILC.

52.228-5 INSURANCE--WORK ON A GOVERNMENT INSTALLATION (JAN 1997)

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe, or (2) until 30 days after the insurer or the Contractor gives written

notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

(End of clause)

52.228-11 PLEDGES OF ASSETS (FEB 1992)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond--

(1) Pledge of assets; and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of--

(1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in FAR 28.203-2 (except see 28.203-2(b)(2) with respect to Government securities held in book entry form) and/or;

(2) A recorded lien on real estate. The offeror will be required to provide--

(i) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR 28.203-3(d);

(ii) Evidence of the amount due under any encumbrance shown in the evidence of title;

(iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

(End of clause)

52.228-14 IRREVOCABLE LETTER OF CREDIT (DEC 1999)

(a) "Irrevocable letter of credit" (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Government (the beneficiary) of a written demand therefor. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, or to secure other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.

(c) The letter of credit shall be irrevocable, shall require presentation of no document other than a written

demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and--

(1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Contracting Officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

(i) For contracts subject to the Miller Act, the later of--

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to the Miller Act, the later of--

(A) 90 days following final payment; or

(B) For performance bonds only, until completion of any warranty period.

(d) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. The offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. Unless the financial institution issuing the ILC had letter of credit business of less than \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of less than \$25 million in the past year.

(e) The following format shall be used by the issuing financial institution to create an ILC:

[Issuing Financial Institution's Letterhead or Name and Address]

Issue Date _____

IRREVOCABLE LETTER OF CREDIT NO. _____

Account party's name _____

Account party's address _____

For Solicitation No. _____ (for reference only)

TO: [U.S. Government agency]

[U.S. Government agency's address]

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States \$_____. This Letter of Credit is payable at [issuing financial institution's and, if any, confirming financial institution's] office at [issuing financial institution's address and, if any, confirming financial institution's address] and expires with our close of business on _____, or any automatically extended expiration date.

2. We hereby undertake to honor your or the transferee's sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of the Government (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution, if any, otherwise state of issuing financial institution].

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

[Issuing financial institution]

(f) The following format shall be used by the financial institution to confirm an ILC:

[Confirming Financial Institution's Letterhead or Name and Address]

(Date) _____

Our Letter of Credit Advice Number _____

Beneficiary: _____ [U.S. Government agency]

Issuing Financial Institution: _____

Issuing Financial Institution's LC No.: _____

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by _____ [name of issuing financial institution] for drawings of up to United States dollars _____/U.S. \$_____ and expiring with our close of business on _____ [the expiration date], or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at _____.

3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.

4. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least 60 days prior to any such expiration date, we shall notify the Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution].

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

[Confirming financial institution]

(g) The following format shall be used by the Contracting Officer for a sight draft to draw on the Letter of Credit:

SIGHT DRAFT

[City, State]

(Date) _____

[Name and address of financial institution]

Pay to the order of _____ [Beneficiary Agency] _____ the sum of United States \$_____. This draft is drawn under Irrevocable Letter of Credit No.

_____.

[Beneficiary Agency]

By: _____

(End of clause)

52.228-15 PERFORMANCE AND PAYMENT BONDS--CONSTRUCTION (JULY 2000)

(a) *Definitions.* As used in this clause--

"Original contract price" means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) *Amount of required bonds* Unless the resulting contract price is \$100,000 or less, the successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:

(1) *Performance bonds (Standard Form 25)* The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) *Payment Bonds (Standard Form 25-A)* The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) *Additional bond protection* (i) The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) *Furnishing executed bonds* The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) *Surety or other security for bonds* The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the *Federal Register* or may be obtained from the:

U.S. Department of Treasury
Financial Management Service
Surety Bond Branch
401 14th Street, NW, 2nd Floor, West Wing
Washington, DC 20227.

(e) *Notice of subcontractor waiver of protection (40 U.S.C. 270b(c))* Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

(End of clause)

52.229-6 TAXES--FOREIGN FIXED-PRICE CONTRACTS.

As prescribed in 29.402-1(a), insert the following clause:

Taxes--Foreign Fixed-Price Contracts (Jan 1991)

(a) To the extent that this contract provides for furnishing supplies or performing services outside the United States, its possessions, and Puerto Rico, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

(b) "Contract date," as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"Country concerned," as used in this clause, means any country, other than the United States, its possessions, and Puerto Rico, in which expenditures under this contract are made.

"Tax" and "taxes," as used in this clause, include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

"All applicable taxes and duties," as used in this clause, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract, pursuant to written ruling or regulation in effect on the contract date.

"After-imposed tax," as used in this clause, means any new or increased tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, other than excepted tax, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

"After-relieved tax," as used in this clause, means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the contract date.

"Excepted tax," as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the Contractor's possession of, interest in, or use of property, title to which is in the U.S. Government.

(c) Unless otherwise provided in this contract, the contract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(d) The contract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the contract price by a provision of this contract that the Contractor is required to pay or bear, including any interest or penalty, if the Contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(e) The contract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States shall be entitled to interest received by the Contractor incident to a refund of taxes to the extent that such interest was earned after the Contractor was paid by the Government of the United States for such taxes. The Government of the United States shall be entitled to repayment of any penalty refunded to the Contractor to the extent that the penalty was paid by the Government.

(f) The contract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the contract and that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) below.

(g) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(h) If the Contractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the contract price or was the basis of an increase in the contract price, the amount of the reduction shall be paid or credited to the Government of the United States as the Contracting Officer directs.

(i) The Contractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, the Contractor, any subcontractor, or the transactions or property covered by this contract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(j) The Contractor shall promptly notify the Contracting Officer of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Contractor at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys' fees.

(End of clause)

252.231-7000 SUPPLEMENTAL COST PRINCIPLES (DEC 1991)

When the allowability of costs under this contract is determined in accordance with part 31 of the Federal Acquisition Regulation (FAR), allowability shall also be determined in accordance with part 231 of the Defense FAR Supplement, in effect on the date of this contract.

52.232-5 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (MAY 1997)

(a) Payment of price. The Government shall pay the Contractor the contract price as provided in this contract.

(b) Progress payments. The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.

(1) The Contractor's request for progress payments shall include the following substantiation:

(i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.

(ii) A listing of the amount included for work performed by each subcontractor under the contract.

(iii) A listing of the total amount of each subcontract under the contract.

(iv) A listing of the amounts previously paid to each such subcontractor under the contract.

(v) Additional supporting data in a form and detail required by the Contracting Officer.

(2) In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if--

(i) Consideration is specifically authorized by this contract; and

(ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the

material will be used to perform this contract.

(c) Contractor certification. Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.)

I hereby certify, to the best of my knowledge and belief, that--

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code;

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(4) This certification is not to be construed as final acceptance of a subcontractor's performance.

(Name)

(Title)

(Date)

(d) Refund of unearned amounts. If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the Contractor shall--

(1) Notify the Contracting Officer of such performance deficiency; and

(2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until--

(i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or

(ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) Retainage. If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and

future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(f) Title, liability, and reservation of rights. All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as--

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(g) Reimbursement for bond premiums. In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

(h) Final payment. The Government shall pay the amount due the Contractor under this contract after--

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).

(i) Limitation because of undefinitized work. Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(j) Interest computation on unearned amounts. In accordance with 31 U.S.C. 3903(c)(1), the amount payable under subparagraph (d)(2) of this clause shall be--

(1) Computed at the rate of average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the Contractor receives the unearned amount; and

(2) Deducted from the next available payment to the Contractor.

52.232-17 INTEREST (JUNE 1996)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as

provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. reproduce, prepare derivative works, distribute copies to the public, and (b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

52.232-23 ASSIGNMENT OF CLAIMS (JAN 1986) - ALTERNATE I (APR 1984)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence. Unless otherwise stated in this contract, payments to an assignee of any amounts due or to become due under this contract shall not, to the extent specified in the Act, be subject to reduction or setoff.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

52.232-27 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (MAY 2001)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in sections 2.101 and 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice payments. (1) Types of invoice payments. For purposes of this clause, there are several types of invoice payments that may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of

the estimated amount and value of work or services performed, including payments for reaching milestones in any project:

(A) The due date for making such payments shall be 14 days after receipt of the payment request by the designated billing office. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date shall be the 14th day after the date of the Contractor's payment request, provided a proper payment request is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, shall be as specified in the contract or, if not specified, 30 days after approval for release to the Contractor by the Contracting Officer.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract):

(A) The due date for making such payments shall be either the 30th day after receipt by the designated billing office of a proper invoice from the Contractor, or the 30th day after Government acceptance of the work or services completed by the Contractor, whichever is later. If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor's invoice, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(2) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions (a)(2)(i) through (a)(2)(ix) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice, with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in subparagraph (a)(4) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date. (The Contractor is encouraged to date invoices as close as possible to the date of mailing or transmission.)

(iii) Contract number or other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., prompt payment discount terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(viii) For payments described in subdivision (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.

(ix) Any other information or documentation required by the contract.

(x) While not required, the Contractor is strongly encouraged to assign an identification number to each invoice.

(3) Interest penalty. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) Computing penalty amount. The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the Government until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and will be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(2) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in subdivision (a)(1)(ii) of this clause, Government acceptance or approval shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days.

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this contract.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(5) Prompt payment discounts. An interest penalty also shall be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(6) Additional interest penalty. (i) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with subdivision (a)(6)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor--

(A) Is owed an interest penalty of \$1 or more;

(B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with subdivision (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.

(ii)(A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall--

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) Demands must be postmarked on or before the 40th day after payment was made, except that--

(1) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made; or

(2) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(iii)(A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty, except--

(1) The additional penalty shall not exceed \$5,000;

(2) The additional penalty shall never be less than \$25; and

(3) No additional penalty is owed if the amount of the underlying interest penalty is less than \$1.

(B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision (a)(4)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision (a)(6)(iii)(A) of this clause.

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) Contract financing payments. (1) Due dates for recurring financing payments. If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the [insert day as prescribed by Agency head; if not prescribed, insert 30th day] day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) Due dates for other contract financing. For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) Interest penalty not applicable. Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) Subcontract clause requirements. The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) Prompt payment for subcontractors. A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) Interest for subcontractors. An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause--

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) Subcontractor clause flowdown. A clause requiring each subcontractor to include a payment clause and an interest penalty clause conforming to the standards set forth in subparagraphs (c)(1) and (c)(2) of this clause in each of its subcontracts, and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) Subcontract clause interpretation. The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in

their subcontract, provisions that--

(1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) Withholding permitted. Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) Withholding requirements. Permit such withholding without incurring any obligation to pay a late payment penalty if--

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) A copy of any notice issued by a Contractor pursuant to subdivision (d)(3)(i) of this clause has been furnished to the Contracting Officer.

(e) Subcontractor withholding procedures. If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall--

(1) Subcontractor notice. Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) Contracting Officer notice. Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to subparagraph (e)(1) of this clause;

(3) Subcontractor progress payment reduction. Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (e)(1) of this clause;

(4) Subsequent subcontractor payment. Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and--

(i) Make such payment within--

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under subdivision (e)(5)(i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) Notice to Contracting Officer. Notify the Contracting Officer upon--

- (i) Reduction of the amount of any subsequent certified application for payment; or
- (ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying--
 - (A) The amounts withheld under subparagraph (e)(1) of this clause; and
 - (B) The dates that such withholding began and ended; and
- (6) Interest to Government. Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until--
 - (i) The day the identified subcontractor performance deficiency is corrected; or
 - (ii) The date that any subsequent payment is reduced under subdivision (e)(5)(i) of this clause.
- (f) Third-party deficiency reports. (1) Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under subparagraph (e)(6) of this clause--
 - (i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and
 - (ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subdivision (f)(1)(i) of this clause.
- (2) Subsequent payment or interest charge. As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall--
 - (i) Pay the amount withheld under subdivision (f)(1)(ii) of this clause to such first-tier subcontractor; or
 - (ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.
- (g) Written notice of subcontractor withholding. A written notice of any withholding shall be issued to a subcontractor (with a copy to the Contracting Officer of any such notice issued by the Contractor), specifying--
 - (1) The amount to be withheld;
 - (2) The specific causes for the withholding under the terms of the subcontract; and
 - (3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.
- (h) Subcontractor payment entitlement. The Contractor may not request payment from the Government of

any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) Prime-subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the United States is a party. The United States may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Preservation of prime-subcontractor rights. Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) Non-recourse for prime contractor interest penalty. The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the United States for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER—CENTRAL CONTRACTOR REGISTRATION (MAY 1999)

(a) Method of payment. (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either--

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) Contractor's EFT information. The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) Suspension of payment. If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) Contractor EFT arrangements. If the Contractor has identified multiple payment receiving points (i.e., more than one remittance address and/or EFT information set) in the CCR database, and the Contractor has not notified the Government of the payment receiving point applicable to this contract, the

Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the CCR database.

(f) Liability for uncompleted or erroneous transfers. (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for--

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and--

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(g) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(h) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register in the CCR database and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(i) Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(j) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

(End of Clause)

52.233-1 DISPUTES. (DEC 1998)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) The contractors shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim -

(A) Exceeding \$100,000; or

(B) Regardless of the amount claimed, when using -

(1) Arbitration conducted pursuant to 5 U.S.C. 575-580; or

(2) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

52.233-3 PROTEST AFTER AWARD (AUG. 1996)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either--

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if--

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as

provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

52.236-2 DIFFERING SITE CONDITIONS (APR 1984)

As prescribed in 36.502, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The Contracting Officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of

(1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or

(2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

52.236-3 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to

(1) conditions bearing upon transportation, disposal, handling, and storage of materials;

(2) the availability of labor, water, electric power, and roads;

(3) uncertainties of weather, river stages, tides, or similar physical conditions at the site;

(4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications

made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

(b) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

52.236-4 PHYSICAL DATA (APR 1984)

Data and information furnished or referred to below is for the Contractor's information. The Government shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

(a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations by [insert a description of investigational methods used, such as surveys, auger borings, core borings, test pits, probings, test tunnels].

(b) Weather conditions: Tropical. Data on temperature and rainfall may be obtained from the National Weather Service in Honolulu.

(c) Transportation facilities: The Contractor shall make his own investigation of the condition and availability of public and private roads as well as clearances, restrictions, and load limits of bridges.

(d) Security Requirements. The Contractor shall comply with the industrial security requirements of the Army. Contractor personnel requiring access to the military installation in connection with the contract may be subject to security investigation and shall be admitted to only those parts of the installation or building(s) where their presence is required. While on the job, Contractor employees shall display identification as may be required under the Special Contract Requirements paragraph 'Identification of Employees.' Vehicles operating on the military installation are subject to search by security personnel at any time. Immediately upon receipt of notice to proceed, the Contractor shall furnish to the Contracting Officer the following:

(i) A roster of all employees who will need access to the military installation in connection with the contract. The roster shall be submitted in three copies. If requested in writing by the Contracting Officer, additional personnel data shall also be furnished.

(ii) A list of automotive vehicles which will be used on the military installation in connection with the contract. The list shall include make, year, license number, details of insurance coverage required by the Special Contract Requirements paragraph "Required Insurance", and expiration date of safety inspection decal. The list of automotive vehicles shall be submitted in four copies. The Contractor shall be responsible for vehicle permits issued to him and its subcontractors. When so authorized by the Contracting Officer, the Contractor may coordinate directly with the military police concerning permits for contractor-owned vehicles. Privately-owned vehicles used by Contractor personnel must be registered with the military police by the individual owners.

(End of Clause)
(R 7-603.25 1965 JAN)

52.236-5 MATERIAL AND WORKMANSHIP (APR 1984)

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this

contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

52.236-6 SUPERINTENDENCE BY THE CONTRACTOR (APR 1984)

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the worksite a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

52.236-7 PERMITS AND RESPONSIBILITIES (NOV 1991)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

52.236-8 OTHER CONTRACTS (APR 1984)

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

52.236-9 PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not

unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities

(1) at or near the work site, and

(2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

52.236-10 OPERATIONS AND STORAGE AREAS (APR 1984)

(a) The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Government. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

52.236-11 USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)

(a) The Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Government's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and

the contract shall be modified in writing accordingly.

52.236-12 CLEANING UP (APR 1984)

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

52.236-13 ACCIDENT PREVENTION (NOV 1991)

(a) The Contractor shall provide and maintain work environments and procedures which will

(1) safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;

(2) avoid interruptions of Government operations and delays in project completion dates; and

(3) control costs in the performance of this contract.

(b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall-

(1) Provide appropriate safety barricades, signs, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and

(3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

(d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

(e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

52.236-13 ACCIDENT PREVENTION (NOV 1991) – ALTERNATE I (NOV 1991)

- (a) The Contractor shall provide and maintain work environments and procedures which will
 - (1) safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;
 - (2) avoid interruptions of Government operations and delays in project completion dates; and
 - (3) control costs in the performance of this contract.
- (b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall-
 - (1) Provide appropriate safety barricades, signs, and signal lights;
 - (2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and
 - (3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.
- (c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.
- (d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.
- (e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.
- (f) Before commencing the work, the Contractor shall-
 - (1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and
 - (2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

52.236-15 SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)

- (a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the

form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

52.236-17 LAYOUT OF WORK (APR 1984)

The Contractor shall lay out its work from Government established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

52.236-21 SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997)

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by," or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown," "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated

otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed".

(d) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.

52.236-26 PRECONSTRUCTION CONFERENCE (FEB 1995)

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

252.236-7000 MODIFICATION PROPOSALS - PRICE BREAKDOWN. (DEC 1991)

(a) The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification.

(b) The price breakdown --

(1) Must include sufficient detail to permit an analysis of profit, and of all costs for --

(i) Material;

(ii) Labor;

(iii) Equipment;

(iv) Subcontracts; and

(v) Overhead; and

(2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.

(c) The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.

(d) The Contractor's proposal shall include a justification for any time extension proposed.

252.236-7001 CONTRACT DRAWINGS AND SPECIFICATIONS (AUG 2000)

(a) The Government will provide to the Contractor, without charge, one set of contract drawings and specifications, except publications incorporated into the technical provisions by reference, in electronic or paper media as chosen by the Contracting Officer.

(b) The Contractor shall--

(1) Check all drawings furnished immediately upon receipt;

(2) Compare all drawings and verify the figures before laying out the work;

(3) Promptly notify the Contracting Officer of any discrepancies;

(4) Be responsible for any errors that might have been avoided by complying with this paragraph (b); and

(5) Reproduce and print contract drawings and specifications as needed.

(c) In general--

(1) Large-scale drawings shall govern small-scale drawings; and

(2) The Contractor shall follow figures marked on drawings in preference to scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work. The Contractor shall perform such details as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

Title	File	Drawing No.
See list of drawings at the end of this section.		

(End of clause)

252.236-7004 PAYMENT FOR MOBILIZATION AND DEMOBILIZATION. (DEC 1991)

(a) The Government will pay all costs for the mobilization and demobilization of all of the Contractor's plant and equipment at the contract lump sum price for this item.

(1) percent of the lump sum price upon completion of the contractor's mobilization at the work site.

(2) The remaining percent upon completion of demobilization.

(b) The Contracting Officer may require the Contractor to furnish cost data to justify this portion of the bid if the Contracting Officer believes that the percentages in paragraphs (a) (1) and (2) of this clause do not bear a reasonable relation to the cost of the work in this contract.

(1) Failure to justify such price to the satisfaction of the Contracting Officer will result in payment, as determined by the Contracting Officer, of --

(i) Actual mobilization costs at completion of mobilization;

(ii) Actual demobilization costs at completion of demobilization; and

(iii) The remainder of this item in the final payment under this contract.

(2) The Contracting Officer's determination of the actual costs in paragraph (b)(1) of this clause is not subject to appeal.

52.242-13 BANKRUPTCY (JUL 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

(End of clause)

52.242-14 SUSPENSION OF WORK (APR 1984)

(a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract. (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

52.243-4 CHANGES (AUG 1987)

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes--

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the Government-furnished facilities, equipment, materials, services, or site; or
- (4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating

- (1) the date, circumstances, and source of the order and
- (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after

(1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

252.243-7001 PRICING OF CONTRACT MODIFICATIONS (DEC 1991)

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR part 31 and DFARS part 231, in effect on the date of this contract, apply.

252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (MAR 1998)

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

(Official's Name)

(Title)

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including--

(1) Cost or pricing data if required in accordance with subsection 15.403-4 of the Federal Acquisition Regulation (FAR); and

(2) Information other than cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to----

(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

(2) Final adjustment under an incentive provision of the contract.

52.245-1 PROPERTY RECORDS (APR 1984)

The Government shall maintain the Government's official property records in connection with Government property under this contract. The Government Property clause is hereby modified by deleting the requirement for the Contractor to maintain such records.

52.246-12 INSPECTION OF CONSTRUCTION (AUG 1996)

(a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

- (c) Government inspections and tests are for the sole benefit of the Government and do not--
- (1) Relieve the Contractor of responsibility for providing adequate quality control measures;
 - (2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
 - (3) Constitute or imply acceptance; or
 - (4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) of this section.
- (d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.
- (e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.
- (f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.
- (g) If the Contractor does not promptly replace or correct rejected work, the Government may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.
- (h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.
- (i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government's rights under any warranty or guarantee.

52.246-21 WARRANTY OF CONSTRUCTION (MAR 1994)

- (a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of--

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall--

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

(End of clause)

52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JAN 1997)

(a) "International air transportation," as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S.-flag air carrier", as used in this clause, means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) The Contractor agrees, in performing work under this contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): [State reasons]: _____

(End of statement)

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)

(a) Definitions. As used in this clause --

(1) "Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the Contractor or any subcontractor.

(2) "Department of Defense" (DoD) means the Army, Navy, Air Force, Marine Corps, and defense agencies.

(3) "Foreign flag vessel" means any vessel that is not a U.S.-flag vessel.

(4) "Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) "Subcontractor" means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

(6) "Supplies" means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) "Supplies" includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds; end items; construction materials; and components of the foregoing.

(7) "U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b)(1) The Contractor shall use U.S.-flag vessels when transporting any supplies by sea under this contract.

(2) A subcontractor transporting supplies by sea under this contract shall use U.S.-flag vessels if--

(i) This contract is a construction contract; or

(ii) The supplies being transported are--

(A) Noncommercial items; or

(B) Commercial items that--

(1) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it contracts for f.o.b. destination shipment);

(2) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(3) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(c) The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that --

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are inordinately excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum --

(1) Type, weight, and cube of cargo;

(2) Required shipping date;

(3) Special handling and discharge requirements;

(4) Loading and discharge points;

(5) Name of shipper and consignee;

(6) Prime contract number; and

(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information --

(1) Prime contract number;

(2) Name of vessel;

(3) Vessel flag of registry;

(4) Date of loading;

(5) Port of loading;

(6) Port of final discharge;

(7) Description of commodity;

(8) Gross weight in pounds and cubic feet if available;

(9) Total ocean freight in U.S. dollars; and

(10) Name of the steamship company.

(f) The Contractor agrees to provide with its final invoice under this contract a representation that to the best of its knowledge and belief --

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract;

(3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. The Contractor shall describe these shipments in the following format:

ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY

TOTAL_____

(g) If the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) The Contractor shall include this clause, including this paragraph (h), in all subcontractors under this contract that--

(1) Exceed the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; and

(2) Are for a type of supplies described in paragraph (b)(3) of this clause.

(End of clause)

252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA (MAR 2000)

(a) The Contractor has indicated by the response to the solicitation provision, Representation of Extent of Transportation by Sea, that it did not anticipate transporting by sea any supplies. If, however, after the award of this contract, the Contractor learns that supplies, as defined in the Transportation of Supplies by Sea clause of this contract, will be transported by sea, the Contractor --

(1) Shall notify the Contracting Officer of that fact; and

(2) Hereby agrees to comply with all the terms and conditions of the Transportation of Supplies by Sea clause of this contract.

(b) The Contractor shall include this clause; including this paragraph (b), revised as necessary to reflect the relationship of the contracting parties--

(1) In all subcontracts under this contract, if this contract is a construction contract; or

(2) If this contract is not a construction contract, in all subcontracts under this contract that are for--

(i) Noncommercial items; or

(ii) Commercial items that--

(A) The Contractor is reselling or distributing to the Government without adding value (generally, the Contractor does not add value to items that it subcontracts for f.o.b. destination shipment);

(B) Are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations; or

(C) Are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(End of clause)

52.248-3 VALUE ENGINEERING--CONSTRUCTION (FEB 2000) - ALTERNATE I (APR 1984)

(a) General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECP's, in accordance with paragraph (f) below.

(b) Definitions. "Collateral costs," as used in this clause, means agency costs of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.

"Instant contract savings," as used in this clause, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs, including subcontractors' development and implementation costs (see paragraph (h) below).

"Value engineering change proposal (VECP)" means a proposal that--

(1) Requires a change to this, the instant contract, to implement; and

(2) Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; provided, that it does not involve a change--

(i) In deliverable end item quantities only; or

(ii) To the contract type only.

(c) VECP preparation. As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (7) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) below.

(4) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(5) A prediction of any effects the proposed change would have on collateral costs to the agency.

(6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(7) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) Submission. The Contractor shall submit VECP's to the Resident Engineer at the worksite, with a copy to the Contracting Officer.

(e) Government action. (1) The Contracting Officer shall notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer shall notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it shall not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer shall notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) Sharing.

(1) Rates. The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by (i) 45 percent for fixed-price contracts or (ii) 75 percent for cost-reimbursement contracts.

(2) Payment. Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to--

(i) Accept the VECP;

(ii) Reduce the contract price or estimated cost by the amount of instant contract savings; and

(iii) Provide the Contractor's share of savings by adding the amount calculated to the contract price or fee.

(g) Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of \$50,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this contract's price under paragraph (f) above, the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs clearly resulting from a VECP accepted by the Government under this contract, but shall exclude any value engineering incentive payments to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that these payments shall not reduce the Government's share of the savings resulting from the VECP.

(h) Data. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

"These data, furnished under the Value Engineering--Construction clause of contract , shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations."

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

(j) Collateral savings. If a VECP is accepted, the Contracting Officer will increase the instant contract amount by 20 percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Contracting Officer will be the sole determiner of the amount of collateral savings.

(End of clause)

52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SEP 1996)
- ALTERNATE I (SEP 1996)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and

other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (g) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of--

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including--

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer.

(i) The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted--

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

52.249-10 DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if--

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include

- (i) acts of God or of the public enemy,
- (ii) acts of the Government in either its sovereign or contractual capacity,
- (iii) acts of another Contractor in the performance of a contract with the Government,
- (iv) fires,
- (v) floods,
- (vi) epidemics,
- (vii) quarantine restrictions,
- (viii) strikes,
- (ix) freight embargoes,

(x) unusually severe weather, or delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

52.253-1 COMPUTER GENERATED FORMS (JAN 1991)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

S-28.10 OFFER GUARANTEE (APR 1984)

(a) Failure to furnish an offer guarantee in the proper form and amount, by the time set for receipt of proposals, may be cause for rejection of the offer.

(b) The offeror shall furnish an offer guarantee in the form of a firm commitment, such as a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit, or under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return offer guarantees, other than bid bonds, (1) to unsuccessful offeror upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the offer as accepted.

(c) If the successful offeror, upon acceptance of its offer by the Government within the period specified for acceptance, fails to execute all contractual documents or give a bond(s) as required by the solicitation within the time specified, the Contracting Officer may terminate the contract for default.

(d) In the event that the contract is terminated for default, the offeror is liable for any cost of acquiring the work that exceeds the amount of its offer, and the offer guarantee is available to offset the difference.

(End of clause)
(R 7-2003.25 1964 JUN)

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CLAUSES INCORPORATED BY FULL TEXT

S-36.9 AS-BUILT DRAWINGS (OCT 1999)

The Contractor shall keep on the job site two complete sets of drawings. These drawings will be identified as working 'As-Built' drawings and shall be used to record all changes from the original drawings and specifications, the exact 'As-Built' locations, sizes and types of equipment, etc. These working 'As-Built' drawings shall be corrected daily and the quality of draftsmanship shall be compatible with the draftsmanship of the original drawings.

The working As-Built drawings will be reviewed monthly by the Contracting Officer's Representative (COR) to assure satisfactory performance in maintaining an accurate and current recording of as-built conditions. Failure to maintain an accurate and current recording of as-built conditions, as determined by the COR, shall be cause for appropriate action by the Contracting Officer, including withholding a part of contract payment until such time as the deficiencies have been corrected.

At the final inspection or upon beneficial occupancy of the facility by the user, whichever comes first, the Contractor shall provide one of the two sets of working As-Built drawings to the COR for turnover with the facility. The Contractor shall continue to maintain the remaining set of working As-Built drawings until such time the COR expects no more additional changes and or modifications to the project. Contractor shall obtain a copy of the CADD files from the COR. Within 20 calendar days of receipt of a request by the COR, the Contractor shall submit to the Contracting Officer one (1) full set of CADD files in TYPE OF CADD FORMAT format on CD-ROM. The contractor modifications to the CADD files shall be completed with native TYPE OF CADD FORMAT vector graphic Commands. The as-built drawings shall be a record of the construction as installed and completed by the Contractor. They shall include all the information shown on the contract set of drawings and a record of all deviations, modifications, or changes from those drawings, however minor, which were incorporated in the work, all additional work not appearing on the contract drawings, and all changes which are made after final inspection of the contract work.

In the event the Contractor accomplishes additional work which changes the as-built conditions of the facility after submission of the as-built drawings, the Contractor shall furnish revised and/or additional drawings as required to depict as-built conditions. The requirements for these additional drawings will be the same as for the as-built drawings included in the original submission.

[End of Statement]

S-36.8 GROUND-FAULT CIRCUIT INTERRUPTERS

Ground-fault circuit interrupters for all 125-volt single phase 15- and 20-ampere receptacle outlets which are not part of the permanent wiring of the building or structure shall be provided by the Contractor in accordance with Section 305-6 of the 1999 National Electrical Code.

[End of Statement]

S-36.7 IDENTIFICATION OF EMPLOYEES

The Contractor shall be responsible for furnishing to each employee and for requiring each employee engaged on the work to display such identification as may be approved and directed by the Contracting Officer. All prescribed identification shall immediately be delivered to the Contracting Officer for cancellation upon the release of any employee. When required by the Contracting Officer, the Contractor shall obtain and submit fingerprints of all persons employed or to be employed on the project.

[End of Statement]

S-36.6 CERTIFICATES OF COMPLIANCE

Any certificates required for demonstrating proof of compliance of materials with specification requirements shall be executed in five (5) copies. Each certificate shall be signed by an official authorized to certify in behalf of the manufacturing company and shall contain the name and address of the Contractor, the project name and location, and the quantity and date or dates of shipment or delivery to which the certificates apply. Copies of laboratory test reports submitted with certificates shall contain the name and address of the testing laboratory and the date or dates of the tests to which the report applies. Certification shall not be construed as relieving the Contractor from furnishing satisfactory material, if after tests are performed on selected samples, the material is found not to meet the specific requirements.

[End of Statement]

S-36.5 TIME EXTENSIONS FOR UNUSUALLY SEVERE WEATHER

1. This provision specifies the procedure for determination of time extensions for unusually severe weather in accordance with the contract clause entitled DEFAULT (FIXED-PRICE CONSTRUCTION). In order for the Contracting Officer to award a time extension under this clause, the following conditions must be satisfied:

a. The weather experienced at the project site during the contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the project location during any given month.

b. The unusually severe weather must actually cause a delay to the completion of the project. The delay must be beyond the control and without the fault or negligence of the Contractor.

2. The following schedule of monthly anticipated adverse weather delays is based on National Oceanic and Atmospheric Administration (NOAA) or similar data for the project location and will constitute the base line for monthly weather time evaluations. The Contractor's progress schedule must reflect these anticipated adverse weather delays in all weather dependent activities.

MONTHLY ANTICIPATED ADVERSE WEATHER DELAY WORK DAYS BASED ON **01 DAY WORK WEEK

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----

3. Upon acknowledgment of the Notice to Proceed (NTP) and continuing throughout the contract, the Contractor will record on the daily CQC report, the occurrence of adverse weather and resultant impact to normally scheduled work. Actual adverse weather delay days must prevent work on critical activities for 50 percent or more of the Contractor's scheduled work day. The number of actual adverse weather delay days shall include days impacted by actual adverse weather (even if adverse weather occurred in previous month), be calculated chronologically from the first to the last day of each month, and be recorded as full days. If the number of actual adverse weather delay days exceeds the number of days anticipated in paragraph 2, above, the Contracting Officer will convert any qualifying delays to calendar days, giving full consideration for equivalent fair weather work days, and issue a modification in accordance with the contract clause entitled DEFAULT (FIXED-PRICE CONSTRUCTION). [ER 415-1-15, 31 Oct 89]

S-36.34 VEHICLE REGISTRATION

1. All vehicles operating on Army Installations must have a valid registration, valid certificate of insurance, current safety inspection and be operated by a licensed driver. Vehicle operators shall be prepared to present these documents when requested by the security guard.
2. Contractor vehicles utilized in performance of the contract shall be registered with the Installation Provost Marshal for entry into any Army Installation. This includes contractor employees' privately-owned vehicles (POVs) used to travel to and from the job site. Employees will be allowed to register only one vehicle. It shall be the sole responsibility of the contractor to register vehicles with the Provost Marshal.
3. Prior to contract performance, the contractor shall provide the Contracting Officer with a list of company-owned vehicles, employee POVs, and any subcontractor vehicles to be registered. The Contracting Officer will prepare a request for vehicle registration to the Provost Marshal. Upon receipt of the signed request the contractor shall report directly to the Provost Marshal for vehicle registration. Contractor employees must report in person for registration of their POVs. The following documents will be required to be presented to the Provost Marshal for vehicle registration:
 - a. Contracting Officer's request for vehicle registration.
 - b. Valid Vehicle registration
 - c. Valid Certificate of Insurance
 - d. Current Safety Inspection
 - e. Valid driver's license
4. At any time contractor employees (or subcontractor employees) are operating contractor-owned vehicles on an Army Installation, they shall have in their possession a letter signed by a corporate officer authorizing the individual to drive the vehicle.
5. The Contracting Officer and the Provost Marshal office shall be notified of any changes in vehicles within three business days of the change.
6. In the event the Provost Marshal issues extended passes for vehicles, lost passes shall be reported immediately, in writing, to the appropriate Provost Marshal Office, in order to obtain new passes. Notification shall include all circumstances surrounding the loss of the original passes. All vehicle passes issued shall be returned to the Provost Marshal upon completion of the contract, termination of an employee or discontinued use of the registered vehicles.

7. Failure to follow the procedures outlined above may result in delays in entering Army Installations. The Government is not responsible for any adverse impact on the contractor or its operation as a result of delays due to the failure to register vehicles.

S-36.22 NOTICE OF PARTNERING

The Government intends to encourage the foundation of a cohesive partnering arrangement with the contractor and its subcontractors. This partnering arrangement will be structured to draw on the strengths of each organization to identify and achieve reciprocal goals. The objectives are effective and efficient contract performance intended to achieve completion within budget, on schedule, and in accordance with contract plans and specifications. This partnering arrangement will be bilateral in membership. To implement this partnering initiative, it is anticipated that within 60-days of Notice to Proceed, the contractor and Government management teams to include on-site and off-site management will attend a 2 day partnering development seminar/team building workshop. Any costs associated with the partnering workshop, excluding salaries, travel, lodging, and food for Government personnel, shall be borne by the contractor. The facilitator for the workshop shall be an objective and neutral third party participant, skilled in team building and group dynamics, who has no vested interest in the decisions reached by the group. Up to 20 Government personnel will attend this workshop. The partnering workshop will be held in Kwajalein at a date to be determined later.

[End of Statement]

S-36.21 AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)

(a) The Government shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Government, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

(c) Schedule of utilities available from the Government without charge: **connections to water and electricity lines can be made, however, metering is required.**

[End of Statement]

S-36.20 PERFORMANCE OF WORK BY THE CONTRACTOR - DEFINED (NOV 1998)

(a) "Work," means physical work activities, involving any of the trades required to directly place the construction required by the contract. It also includes physical activities that directly support the work, such as: (1) warehousing; (2) maintenance of equipment; (3) procurement and transportation of supplies or construction materials to the site for use by the contractor; (4)

procuring, transporting and providing equipment for use by the contractor; (5) logistical activities that directly support the contractor's employees; and (6) similar activities. The meaning of the term does not include: (1) physical work performed by subcontractors; (2) procurement and transportation of supplies or construction materials to the site for use by subcontractors; (3) procuring, transporting and providing equipment for use by subcontractors; logistical activities undertaken by subcontractors for the benefit of contractor or subcontractor employees; (4) superintendence, quality control, clerical or similar activities; or (5) other activities of a similar nature.

Work will be quantified in terms of its monetary cost to the contractor, and will be compared to the total direct costs that the contractor incurs in performing the contract.

(b) "On the site" means the area within the construction limits depicted or described in the contract drawings or specifications. Activities such as transportation, maintenance and logistics that take place outside of the construction limits depicted or described are still "on the site," if in direct support of activities within the construction limits.

(c) "The contractor's own organization" means those individuals who are employed and paid by the contractor, whether full or part time. If a joint venture or partnership, members (and their paid employees) of the joint venture or partners are considered part of "the contractor's own organization." If a corporation, wholly-owned subsidiary elements of the corporation and their paid employees, are considered part of "the contractor's own organization." Any individual who is employed or paid, even on an occasional basis by an entity other than the contractor (such as a subcontractor), or any subcontractor or supplier to the contractor, is not considered part of "the contractor's own organization."

[End of Statement]

S-36.19 PROGRESS CHARTS

If the Government revises the work to be accomplished by issuing a Notice to Proceed with a change to the contract which would affect the order of work or duration of time for completing the work, the progress chart prepared by the Contractor pursuant to the Contract Clause entitled 'SCHEDULE FOR CONSTRUCTION CONTRACTS' shall be revised promptly by the Contractor by adding to, deleting, or rescheduling the affected features to indicate the Contractor's current plans for completing the work as revised. The cost for this revision of the schedule is a part of the cost of the change. Revisions to the progress charts shall be made no later than the next regular progress updating following notice to proceed with the change, whether or not the formal modification to the contract has been issued. If the Contractor fails or refuses to incorporate the changed work in the progress chart, the Contracting Officer may furnish revisions which the Contractor shall include and use in the progress chart until the modification is settled or until actual dates supersede the estimated data. If the Contractor objects to the changes furnished by the Contracting Officer, it shall submit such objections in writing along with a counterplan within 20 days after the date suggested revisions were furnished by the Contracting Officer. Failure to submit objections and counterplan within the 20 days will be deemed to indicate the Contractor's concurrence in the Contracting Officer's suggested revisions. The schedule into which these revisions have been incorporated shall become the current schedule for continued evaluation of progress and the document which will be used to evaluate impact on the Contractor's work for time extensions.

[End of Statement]

S-36.18 ACCIDENT PREVENTION PLAN (DEC 1998)

Within 15 days after receipt of Notice of Award of the contract, and at least 7 days prior to the preconstruction conference, four copies of the Accident Prevention Program shall be submitted to the Contracting Officer for review and acceptance. The program shall consist of the following forms and documents:

(a) An executed POD Form 248-R Rev (1 Jun 98), Accident Prevention Program, Administrative Plan.

(b) An executed POD Form 184-R Rev (16 Oct 98), Activity Hazard Analysis. (At the Contracting Officer's discretion, the Contractor may submit its Activity Hazard Analysis only for the first phase of construction provided that it is accompanied by an outline of the remaining phases of construction. All remaining phases shall be submitted and accepted prior to the beginning of work in each phase.)

(c) A copy of company policy statement of accident prevention and any other guidance statements normally provided new employees.

Contractor shall not commence physical work at the site until the program has been accepted by the Contracting Officer, or his authorized representative. In developing and implementing its Accident Prevention Program, the Contractor is also responsible for reviewing Section 1 of the most current edition (Sep 1996) of US Army Corps of Engineers Safety and Health Requirements Manual, Engineer Manual 385-1-1. [See paragraph entitled, SAFETY STANDARDS, in Section 00800]

[End of Statement]

S-36.17 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE (AUG 1999)

Whenever a contract or modification of contract price is negotiated, the Contractor's cost proposals for equipment ownership and operating expenses shall be determined in accordance with the requirements of Special Contract Requirements statement, entitled "EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE," of this solicitation. EP 1110-1-8 "Construction Equipment Ownership and Operating Expense Schedule" is available at [http://www.usace.army.mil/inet/usace-docs/eng-pamphlets/ep1110-1-8\(vol10\)/toc.htm](http://www.usace.army.mil/inet/usace-docs/eng-pamphlets/ep1110-1-8(vol10)/toc.htm) for State of Hawaii (Region 10) and at [http://www.usace.army.mil/inet/usace-docs/eng-pamphlets/ep1110-1-8\(vol12\)/toc.htm](http://www.usace.army.mil/inet/usace-docs/eng-pamphlets/ep1110-1-8(vol12)/toc.htm) for Kwajalein Island, Roi-Namur Island, and Meck Island (Area 12), including Guam, American Samoa, and Johnston Island). [FAR 31.105(d)(2)(i) and EFARS 31.105(d)(2)(i)(b)].

[End of Statement]

S-36.12 PROJECT SIGN

A project sign shall be fabricated and erected at a location designated by the Contracting Officer. The sign shall be constructed as shown on Drawing No. 40-21-06 copies of which are provided at the end of this section. The sign shall be erected as soon as possible and within 15 days after the date of notice to proceed. Upon completion of the project, the sign shall be removed and disposed of.

[End of Statement]

S-36.11 POSTERS AND NOTICES

Wage Rate, Equal Employment Opportunity, and Nondiscrimination in Employment Posters and Notices will be provided to the Contractor by the Contracting Officer. The Contractor shall mount these posters and notices, together with the wage determination decision, under weatherproof, transparent, protective covering, in one or more conspicuous places, as approved, and readily available to employees.

[End of Statement]

S-36.10 WARRANTY IMPLEMENTATION (MARCH 2000)

(a) The Contractor shall designate a representative within the State of Hawaii to implement the Warranty of Construction clause. The Contractor may designate himself provided he has a permanent office in the State of Hawaii. The Contractor may designate different representatives for separate specialties of work.

(b) The name, address, telephone number of each representative, and nomenclature of warranty item shall be submitted to the Contracting Officer's representative at least 30 days prior to the contract completion date or beneficial occupancy of the work or part thereof. For the purposes of paragraph f of the warranty clause, a reasonable time shall be considered to be as follows:

(1) 21 calendar days from the receipt of a written notification of any failure, defect, or damage of such nature that the work remains functional or habitable or both, as applicable.

(2) 24 hours for failures, defects or damages which render the work nonfunctional or uninhabitable or both, as applicable. Response in this instance starts from receipt of verbal notification from an authorized Government representative. Written confirmation will follow the initial verbal request.

[End of Statement]

S-28.8 PERFORMANCE AND PAYMENT BONDS (OCT 1995)

(Applicable to contracts exceeding \$100,000)

Within fourteen (14) calendar days after the date of contract award, the bidder to whom award is made shall furnish the Government with two bonds, each with good and sufficient surety or sureties acceptable to the Government; namely, a Performance Bond (Standard Form 25) and a Payment Bond (Standard Form 25-A).

Any bonds furnished will be furnished by the Contractor to the Government prior to issuance of a Notice to Proceed by the Government. [FAR 28.102-3]

[End of Statement]

S-28.6 REQUIRED INSURANCE

A. The contractor shall provide and maintain, during the entire performance of this contract, at least the following kinds and amounts of insurance pursuant to the clause in Section 00700 entitled "Insurance--Work On A Government Installation":

Type	Amount
1. Comprehensive General Liability	\$500,000 per occurrence
2. Comprehensive Automobile Liability:	
(a) Bodily Injury or Death	\$200,000 per person \$500,000 per occurrence
(b) Property Damage	\$20,000 per occurrence

B. Additionally the contractor shall provide, before commencing performance under this contract, such workers' compensation insurance or security as the Defense Base Act (42 U.S.C. 1651, et seq.) requires and continue to maintain it until performance is completed pursuant to the clause in 00700 entitled "Workers' Compensation Insurance (Defense Base Act)".

C. Before commencing performance under this contract, the contractor shall submit to the Contracting Officer a written certification that the insurance or security required under the foregoing paragraphs has been obtained along with the evidence thereof.

D. The contractor shall insert this clause in all subcontracts under this contract.

[End of Statement]

S-19 SAFETY STANDARDS

The successful offeror will be required to comply with Chapter 396 of the Hawaii Occupational Safety and Health Act (OSHA) standards and Title 12 Department of Labor and Industrial Relations, Subtitle 8 Division of Occupational Safety and Health, Part 2 General Industry Standards as well as with the Corps of Engineers Manual 385-1-1, Safety and Health Requirements Manual. [Title 29, CFR, Chap 18, Part 1910 (OSHA)]

[End of Statement]

S-19A U.S. ARMY CORPS OF ENGINEERS SAFETY AND HEALTH REQUIREMENTS MANUAL, EM 385-1-1 (FEB 01)

This paragraph applies to contracts and purchase orders that require the contractor to comply with EM 385-1-1 (e.g., contracts that include the Accident Prevention clause at FAR 52.236-13 and/or other safety provisions.) EM 385-1-1 and its changes are available at the following web site:

http://www.hq.usace.army.mil/soh/hqusace_soh.htm

The Contractor shall be responsible for complying with the current edition and all changes posted on the web as of the effective date of this solicitation.

[End of Statement]

S-1a REPORTING OF CONTRACTOR MANPOWER DATA ELEMENTS (FEB 2001)

(a) Scope. The following sets forth contractual requirements for reporting of contractor labor work year equivalents (also called Contractor Man-year Equivalents (CMEs)) in support of the Army, pursuant to 10 U.S.C. 129a, 10 U.S.C. 2461(g), Section 343 of P.L. 106-65, and 32 CFR 668. Reporting shall be accomplished electronically by direct contractor submission to the secure Army Web Site: <https://contractormanpower.us.army.mil>. (Note: In order to access this secure site, the Windows browser software must be upgraded to support 128-bit encryption)

Information on the background, purposes, and significance of this reporting requirement, and the 32 CFR 668 Final Rule as published in the Federal Register, can be found at this Web Site. In addition, a Help Desk function, detailed instructions on what and how to report, FAQs, and a site demonstration are available. The Army's objective is to collect as much significant CME data as possible to allow accurate reporting to Congress and for effective Army planning. The reporting data elements should not be viewed as an "all or nothing" requirement. Even partial reporting, e.g., direct labor hours, appropriation data, place of performance, Army customer, etc., will be helpful.

(b) Applicability. This reporting requirement applies to services covered by Federal Supply Class or Service codes for "Research and Development," and "Other Services and Construction." Report submissions shall not contain classified information. (Also see "Exemptions" at (d) below.)

For indefinite-delivery indefinite-quantity contracts, this reporting requirement will only apply to task orders exceeding \$25,000.

(c) Requirements. The contractor is required to report the following contractor manpower information, associated with performance of this contract action in support of Army requirements, for all covered contracts, to the Office, Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA(M&RA)), using the secure Army data collection web-site at <https://contractormanpower.us.army.mil>. (Other information requirements associated with the manpower data collection (contract and task or delivery order numbers; appropriation data and amounts; total estimated value of contract; federal supply class or service code; major Army organizational element receiving or reviewing work; beginning and ending date for reporting period; place of performance; name, address, and point of contract for contractor; etc.) are specified and explained at the web site.)

(1) Labor Hours. Composite direct labor hours and the value of those hours. Composite indirect labor hours associated with the reported direct hours, and the value of those indirect labor hours plus compensation related costs for direct labor hours ordinarily included in the indirect pools.

(2) Rates. Alternatively, contractors may report two distinct, relevant (annualized) composite or average indirect labor rates in lieu of raw indirect labor hours and the value of those indirect hours. Such rates shall be annualized average estimates for the reporting contractor and need not be developed for each reporting period. Either method chosen should be consistently reported.

(d) Exemption(s). If the contractor is unable to comply with these reporting requirements without creating a whole new cost allocation system or system of records (such as a payroll accounting system), or due to similar insurmountable practical or economic reasons, the contractor may claim an exemption to at least a portion of the reporting requirement by certifying in writing to the contracting officer the clear underlying reason(s) for exemption from the specified report data element(s), and further certifying that they do not otherwise have to provide the exempted

information, in any form, to the United States Government. The "self-exemption" will apply to all contract actions involving the contractor and will be reviewed and approved by the Deputy Assistant Secretary of the Army (Procurement), in coordination with the Deputy Assistant Secretary of the Army (Force Management and Resources), whose decision is final in this matter.

(e) Uses and Safeguarding of Information. The information submitted will be treated as contractor proprietary information when associated with a contractor name or contract number.

(f) Subcontract Data. The contractor shall ensure that all reportable subcontract data is timely reported to the data collection web site (citing this contract/order number). At the discretion of the prime contractor, this reporting may be done directly by subcontractors to the data collection site; or by the prime contractor after consolidating and rationalizing all significant data from their subcontractors.

(g) Report schedule. The contractor is required to report the required information to the ASA(M&RA) data collection web site generally contemporaneous with submission of a request for payment (for example, voucher, invoice, or request for progress payment), but not less frequently than quarterly, retroactive to October 1, 1999, or the start of the contract/order, whichever is later. Deviation from this schedule requires approval of the contracting officer.

The contractor shall include a statement in their payment request that Contractor Manpower Reporting has been completed by their firm and applicable subcontractors. Government officials will verify prime contractor and subcontractor compliance with the reporting requirement. Compliance with this requirement is an integral part of the performance of this contract and will be reflected in the performance evaluation of this contract.

(h) Reporting Flexibility. Contractors are encouraged to communicate with the Help Desk identified at the data collection web site to resolve reporting difficulties. The web site reporting pages include a "Remarks" field to accommodate non-standard data entries if needed to facilitate simplified reporting and to minimize reporting burdens arising out of unique circumstances. Changes to facilitate reporting may be authorized by the contracting officer or the Help Desk (under HQDA policy direction and oversight). Help Desk may be contacted as follows:

Technical Help Desk: (703) 790-5289 or e-mail to: contractormanpowertech@hqda.army.mil
Functional Help Desk: e-mail to: contractormanpowertech@hqda.army.mil

[End of Statement]

52.231-5000 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE.

EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE (MAR 1995) — EFARS

(a) This clause does not apply to terminations. See 52.249-5000, Basis for settlement of proposals and FAR Part 49.

(b) Allowable cost for construction and marine plant and equipment in sound workable condition owned or controlled and furnished by a contractor or subcontractor at any tier shall be based on actual cost data for each piece of equipment or groups of similar serial and series for which the Government can determine both ownership and operating costs from the contractor's accounting records. When both ownership and operating costs cannot be determined for any piece of equipment or groups of similar serial or series equipment from the contractor's accounting records, costs for that equipment shall be based upon the applicable provisions of EP 1110-1-8, Construction Equipment Ownership and Operating Expense Schedule, Region *[insert Roman numeral for the appropriate region of the schedule]*. Working conditions shall be considered to be

average for determining equipment rates using the schedule unless specified otherwise by the contracting officer. For equipment not included in the schedule, rates for comparable pieces of equipment may be used or a rate may be developed using the formula provided in the schedule. For forward pricing, the schedule in effect at the time of negotiations shall apply. For retroactive pricing, the schedule in effect at the time the work was performed shall apply.

(c) Equipment rental costs are allowable, subject to the provisions of FAR 31.105(d)(ii) and FAR 31.205-36. Rates for equipment rented from an organization under common control, lease-purchase arrangements, and sale-leaseback arrangements, will be determined using the schedule, except that actual rates will be used for equipment leased from an organization under common control that has an established practice of leasing the same or similar equipment to unaffiliated lessees.

(d) When actual equipment costs are proposed and the total amount of the pricing action exceeds the small purchase threshold, the contracting officer shall request the contractor to submit either certified cost or pricing data, or partial/limited data, as appropriate. The data shall be submitted on Standard Form 1411, Contract Pricing Proposal Cover Sheet.

(End of clause)

52.249-5000 BASIS FOR SETTLEMENT OF PROPOSALS.

BASIS FOR SETTLEMENT OF PROPOSALS

"Actual costs will be used to determine equipment costs for a settlement proposal submitted on the total cost basis under FAR 49.206-2(b). In evaluating a terminations settlement proposal using the total cost basis, the following principles will be applied to determine allowable equipment costs:

(1) Actual costs for each piece of equipment, or groups of similar serial or series equipment, need not be available in the contractor's accounting records to determine total actual equipment costs.

(2) If equipment costs have been allocated to a contract using predetermined rates, those charges will be adjusted to actual costs.

(3) Recorded job costs adjusted for unallowable expenses will be used to determine equipment operating expenses.

(4) Ownership costs (depreciation) will be determined using the contractor's depreciation schedule (subject to the provisions of FAR 31.205-11).

(5) License, taxes, storage and insurance costs are normally recovered as an indirect expense and unless the contractor charges these costs directly to contracts, they will be recovered through the indirect expense rate."

(End of Statement)

K-6 UTILITY OUTAGES

Interruptions to existing utilities shall be held to a minimum. Outages to facilitate connections to existing systems shall be scheduled to take place during periods of minimum demand and during non-mission periods, at no additional cost to the Government. Due to the sensitivity of mission related computers and instrumentation, any contract electrical work or testing which includes any risk of an electrical interruption shall require the contractor to schedule for an electrical outage.

a. Prior to beginning work, the contractor shall submit to the Contracting Officer a master plan schedule for all utility outages anticipated to be required during the contract performance period. As a minimum, the master plan schedule shall be keyed to the contractor's progress schedule and include the following outage details:

- (1) Narrative of work activities requiring an outage.
- (2) Approximate date of each outage.
- (3) Anticipated duration of each outage.

b. The contractor shall specify in the master plan schedule the name of an on site company representative who will be the designated point of contact (POC) for the follow-on coordination of specific utility outages during construction. During the follow-on coordination for each outage, the contractor's POC shall be responsible to ensure that all outage details, to include affected facilities and specific dates, time and duration, are coordinated with the USAKA Logistics Contractor's Utilities Manager and all affected users. This coordination effort shall be documented by using a form format similar to the 'Utility Outage Coordination Record', which is included as an attachment at the end of this section. The completed document must be submitted to the Contracting Officer not less than 10 days in advance of the intended outage.

c. No outage will be permitted without the Contracting Officer's Approval. Subsequent to this approval, the contractor shall arrange for announcements of the outage to be carried by local media sources.

[End of Statement]

K-7 UTILIZATION OF MARSHALL ISLANDS SUBCONTRACTORS AND EMPLOYMENT OF MARSHALL ISLANDS PERSONNEL (March 1999)

(a) In accordance with Article IV, "Utilization of Contractors and Employment of Labor," of the Status of Forces Agreement (the SOFA) concluded pursuant to Section 323 of the Compact of Free Association (Title II of the Compact of Free Association Act of 1985, Pub. L. 99- 239), employment preference shall be given by the Contractor, without discrimination, to citizens, nationals, and permanent resident aliens of the Marshall Islands and of the United States. Subcontracts placed under this contract shall reference Article IV of the SOFA and include a statement that the employment preference provisions of Paragraph 1(a), Article IV of the SOFA apply to persons hired under the subcontract. Furthermore, for its subcontracts, the Contractor shall utilize without discrimination, consistent with the laws and regulations of the United States, qualified local contractors and contractors which are legally entities of the United States. Subcontracts placed under this contract shall include a statement that subcontractors, for their subcontracts, shall utilize without discrimination, consistent with the laws and regulations of the United States, qualified local contractors and contractors which are legal entities of the United States.

(b) The Contractor hereby agrees to carry out the policy stated in subparagraph (a) above in the awarding of subcontracts and in the hiring of labor to the fullest extent practicable. The Contractor further agrees to cooperate in any studies or surveys that may be conducted by the United States and/or the Republic of the Marshall Islands as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) Definitions. For the purposes of this clause, the following terms shall have the following meanings:

- (1) The term, local contractor means a local firm incorporated in the Marshall Islands , or otherwise legally organized under the laws of the Marshall Islands, that--

- (i) Is more than 50 percent owned by citizens of the Marshall Islands; or
- (ii) Complies with the following:

- (A) The firm has done business in the Marshall Islands on a continuing basis for not less than 3 years prior to the date of issuance of this solicitation;
- (B) Substantially all of the firms directors of local operations, senior staff, and operating personnel are resident in the Marshall Islands or are U.S. citizens: and
- (C) Most of the operating equipment and physical plant are in the Marshall Islands.

(2) The term, United States contractor, means a firm incorporated in the United States that complies with the following:

- (i) The corporate headquarters are in the United States;
- (ii) The firm has filed corporate and employment tax returns in the United States for a minimum of 2 years (if required), has filed State and Federal income tax returns (if required) for 2 years, and has paid any taxes due as a result of these filings; and
- (iii) The firm employs United States citizens in key management positions; or which is otherwise an entity (such as but not limited to a sole proprietorship, joint venture or other partnership), legally organized and existing under the laws of the United States, its territories or possessions, the majority ownership interest in which is held by an entity (or entities) which (1) have their business headquarters in the United States, (2) have filed income and employment tax returns in the United States for a minimum of two years (if required), have filed state and federal income tax returns (if required) for two years, and have paid any taxes due as a result of these filings; and (3) employee United States citizens in key management positions.

(3) The term "Marshall Islands personnel" means citizens, nationals and lawfully admitted permanent resident aliens of the Republic of the Marshall Islands.

(4) The term "the Contract" means this contract.

(5) The term "subcontract" means any agreement (other than one involving an employer-employee relationship) entered into by the Contractor or any subcontractor calling for supplies or services required for performance of the Contract or any of its subcontracts.

(6) The term "the Plan" means the Subcontracting and Hiring Plan described in this clause.

(7) The term "failed to make good faith effort to comply with the Plan" means a willful or intentional failure to perform in accordance with the requirements of the Subcontracting and Hiring Plan approved under this clause.

(d) For the purposes of compliance with this clause only, contractors acting in good faith may rely on written representations by their subcontractors regarding their status as local contractors, and on written representations by their employees regarding their citizenship and/or alien status.

(e) Prior to receiving award of any contract, resulting from this solicitation, the apparently successful offeror must submit for the Contracting Officer's approval a Subcontracting and Hiring Plan (the Plan) which addresses the contractor's plan as to how it will subcontract and employ, as much as reasonably practicable, local contractors and Marshall Islands personnel. The Plan should separately describe the contractor's plan for subcontracting and employing local contractors and Marshall Islands personnel, broken down between the basic contract and any options, if options are included in the solicitation. No award will be made to the apparently successful offeror unless and until it submits a Plan that is satisfactory to and approved by the Contracting Officer.

(f) The Plan shall include the following:

- (1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of local contractors as subcontractors. These goals shall pertain to all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally accounted for as indirect costs in the offeror's estimating and accounting systems.
- (2) Goals, expressed in terms of percentages of total planned personnel at the jobsite, for the hiring of Marshall Islands personnel by the Contractor.
- (3) A statement of-
 - (i) Total dollars planned to be subcontracted;
 - (ii) Total dollars planned to be subcontracted to local contractors;
 - (iii) Total number of personnel expected to be hired by the Contractor for work at the jobsite; and
 - (iv) Total number of Marshall Islands personnel planned to be hired by the Contractor for work at the jobsite.
- (4) A description of the principal types of supplies and services to be subcontracted, and an identification of the types of supplies and services planned to be subcontracted to local contractors.
- (5) A description of the method used to develop the subcontracting and hiring goals in (1) above.
- (6) A description of the method used to identify potential sources of supplies and services, for solicitation purposes.
- (7) A statement as to whether or not the offeror has included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs allocable to the local contractors.
- (8) The name of the individual(s) employed by the offeror who will administer the offeror's subcontracting and hiring programs, and a description of the duties of such individual(s).
- (9) A description of the efforts the offeror will make to assure that local contractors have a fair opportunity to compete for subcontracts.
- (10) Assurances that the offeror will include a clause similar to this one in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors who receive subcontracts in excess of \$500,000 to adopt a Subcontracting and Hiring Plan similar to the Plan agreed to by the offeror and approved by the Contracting Officer.
- (11) Assurances that the offeror will cooperate in any studies or surveys as may be required and submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the Plan.
- (12) A recitation of the types of records the offeror will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the Plan, including establishing source lists; and a description of its efforts to locate local contractors and award subcontracts to them. These records shall include at least the following on a company-wide basis:
 - (i) Source lists, guides, and other data that identify local contractors.
 - (ii) Organizations contacted in an attempt to locate local contractors.
 - (iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating (A) whether local contractors were solicited and if not, why not, and (B) if applicable, the reason award was not made to a local contractor.
 - (iv) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor.

(g) In order to effectively implement the Plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist local contractors by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such local contractors.

(2) Counsel and discuss subcontracting opportunities with representatives of local contractors.

(h) Prior compliance of the offeror with other subcontracting plans under previous contracts will be considered by the Contracting Officer determining the responsibility of the offeror for award of the Contract.

(i) The failure of the Contractor or any of its subcontractors to comply in good faith with (1) this clause, or (2) the approved Plan required by this clause, may be considered to be a material breach of the Contract and shall be an element listed in the evaluation of the Contractor's performance under the Contract.

(j) If, at Contract completion, the Contractor has failed to meet its subcontracting or hiring goals and the Contracting Officer decides in accordance with paragraph (k) of this clause that the Contractor has failed to make good faith effort to comply with the Plan, the Contracting Officer may determine that the Contractor's performance under the Contract is unsatisfactory.

(k) Before the Contracting Officer makes a final determination that the Contractor has failed to make a good faith effort to comply with the Plan, the Contracting Officer shall give the Contractor written notice specifying the failure and providing the Contractor a reasonable opportunity to demonstrate what good faith efforts have been made. Failure to respond to such a notice within a reasonable time may be taken as an admission that no valid explanation exists.

[End of Statement]

K-8 AVAILABILITY AND USE OF UTILITY SERVICES (DEC 1998)

a. The Government shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at rates in accordance with the Financial Policy and Rate Manual. The Contractor shall carefully conserve any utilities furnished without charge.

b. The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Government, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

c. Schedule of utilities available from the Government without charge: None. The Government requires reimbursement for utilities used.

[End of Statement]

K-9 CLEARANCE, ENTRY AND SECURITY REQUIREMENTS (March 1999)

(a) Entry Requirements. To be admitted to the site of the work, employees or representatives of the Contractor must provide the Commander, USAKA: (1) If United States citizens satisfactory proof of citizenship; (2) If permanent resident aliens of the United States satisfactory proof of legal permanent residency; (3) If citizens, nationals or legal permanent resident aliens of the Republic of the Marshall Islands satisfactory proof of such citizenship, nationality or legal permanent residency; and (4) If third country nationals (nationals who are neither citizens or legal permanent resident aliens of the United States nor citizens, nationals or legal permanent resident aliens of the Republic of the Marshall Islands) possession of a valid passport and visa, satisfactorily evidencing authorization to enter and reside permanently in the Republic of the Marshall Islands.

(b)(1) Entry authorization. Prior to entering any area under the control of United States Army, Kwajalein Atoll (USAKA), any contractor employee or representative who is not a citizen, national or legal permanent resident alien of the Republic of the Marshall Islands, as set forth in subparagraph (a)(3) above, must obtain an entry authorization from the Commander, USAKA. The Contractor must, on behalf of the employee or representative, submit a written entry authorization request to: Commander, USAKA, Attn: SMDAC-K-K-CS, P.O. Box 26, APO AP 96555-2526. The Commander, USAKA may be reached (for information only) by telephoning (805) 238-7994, ext. 3449. The Contractor must provide a copy of each entry authorization request that it submits to USAKA to: U.S. Army Engineer District, Honolulu, Kwajalein Resident Office (CEPOH-KR), Box 28, APO AP 96555-2528.

(2) Entry Authorization Request Documentation. Submit a written request for each individual for which authorization is sought which includes:

- a. Full Name;
- b. Grade (if applicable);
- c. Social Security Number;
- d. Date of Birth;
- e. Place of Birth;
- f. Company/Unit, or Employer;
- g. Reason for Visit;
- h. Date of Entry;
- i. Date of Exit;
- j. Means of Travel; and
- k. USAKA POC and Contract Number.

(3) NOTE: The contractor is responsible for all travel arrangements and expenses incurred by its employees and representatives as a result of the travel.

(4) Requests for entry authorizations must be submitted so as to reach the Commander, USAKA, at least 14 days prior to the desired entry date.

(5) In the event a contractor employee or representative intends to stay in USAKA for 90 days or more, the entry authorization request should list permanent change of station (PCS) as the Reason for Visit. The entry authorization request must list the employee's or representative's approximate departure date, if known.

(6) Entry authorizations are issued on a per-visit basis and cannot be used for multiple visits. Entry authorizations are issued with specific arrival and departure dates. These dates will not always match the dates requested by the Contractor because of limited transportation to and from Kwajalein and other factors. However, arrivals to and departures from Kwajalein must take place on the dates specified on the entry authorization. If an employee is unable to arrive or depart on the specified dates, the Contractor shall notify the USAKA Provost Marshall's Office immediately.

(c) Employment of third country nationals. Procedures for obtaining entry authorization for third country national contractor employees (as described in subparagraph (a)(4) above) are the same as set forth in subparagraph (b) of this Clause. However, requirements for authorization to employ third country national employees at the site of the work are separate from requirements to gain entry authorization for such persons, and are set forth in paragraph 2, Article IV, Utilization of Contractors and Employment of Labor, of the Status of Forces Agreement, which is reproduced at the end of this Section. The Contractor must adhere to the requirements contained therein. The Contractor must notify the Kwajalein Project Office in writing (at the address listed in subparagraph (b)(1) above) of its intent to employ for work in the Republic of the Marshall Islands under the contract any third country national (including citizens of the Federated States of Micronesia residing in the Republic of the Marshall Islands); this notification of intent must be made at least thirty (30) calendar days prior to arrival of such employee at the site of the work. This written notification shall include a description of the nature of the work to be performed by each prospective third country national employee.

(d) Applicability of USAKA/KMR Regulation 210-10. Entry, clearance and security requirements, to which the contractor must adhere, are set forth in USAKA/KMR Regulation 210-10, which is incorporated into this contract in full text.

[End of Statement]

K-10 RESTRICTIONS ON LOCAL HIRE

(a) Local hire is limited to Marshallese and to citizens or legal alien residents of the United States, and shall be subject to the written approval of the Commander of USAKA. Where local hire is required, priority for hiring shall be given to Marshallese. However, the contractor is advised that there may be limited numbers of skilled Marshallese available for hire for this Contract.

(b) The Contractor is advised that consistent with Sections 321 and 323 of Title Three, Article II of the Compact of Free Association Act of 1985, PL 99-239, the United States has entered into two agreements with the Government of the Republic of the Marshall Islands, concerning United States use and operation of the USAKA. These implementing agreements are: (1) the Military Use and Operating Rights Agreement (MUORA) and (2) the Status of Forces Agreement (SOFA). The Contractor must ensure that its performance under this contract is in compliance with all applicable provisions of the Compact of Free Association and its implementing agreements.

(c) The Contractor is advised that there may be policies and procedures, applicable to the hiring and housing of Marshallese, which are promulgated and enforced by the local civilian government. It is the responsibility of the Contractor to comply with such policies and procedures. All requests for written approval of the Commander of USAKA for the local hire of Marshallese shall be accompanied by evidence of appropriate work permits issued by the Kwajalein Atoll Local Government and any other applicable permits necessary under local policies and procedures and the Government of the Marshall Islands policies and procedures.

(d) Persons who are not United States citizens or legal alien residents of the United States will not be permitted to reside on any United States defense site in the Kwajalein Atoll without written permission from the Commander of USAKA, but will be permitted to take meals at the Pacific Dining Room, the Kwajalein Snack Bar, and other USAKA facilities on a per-meal cash basis.

[End of Statement]

K-11 MOVEMENT OF CARGO VIA CONTRACTOR-CHARTERED COMMERCIAL VESSELS

(a) With respect to Contractor cargo to be moved by the Contractor to Kwajalein on a commercial vessel from any port, the Contractor shall submit to the Contracting Officer at least twenty (20) days prior to arrival of such vessel at Kwajalein, a written report giving type cargo, long tons, measurement tons, port of loading, expected date of arrival of vessel and estimated time of arrival. The Contractor shall arrange to have Masters of vessels make periodic reports en route informing the port of destination of any change of hour and date of arrival at Kwajalein.

(b) Due to limited berthing facilities at the main cargo pier at Kwajalein, the Contractor shall be responsible for checking the Military Sealift Command (MSC) Schedule and shall coordinate commercial vessel shipments so that there will be no conflict in MSC and Commercial vessel arrival and use of the cargo pier facilities.

[End of Statement]

K-13 ON-LOADING AND OFF-LOADING OF CARGO FROM SURFACE VESSELS OR AIRCRAFT; TRANSPORTATION TO JOBSITE

(a) The Contractor shall be responsible for all costs associated with on-loading and/or off-loading of construction or contract related material and equipment at Kwajalein involving vessels or aircraft. The Contractor shall be responsible for all movement and handling of material from dockside, aircraft or the USAKA staging area at Kwajalein to the construction storage areas at the jobsite, including all associated costs.

(b) If inter-island transportation is required in this contract, the Contractor shall be responsible for all inter-island transportation of construction personnel, material and equipment, including on-loading and/or off-loading of material and equipment between Kwajalein Atoll project sites, and for all associated costs. USAKA marine vessels may be used on a space required basis for the inter-island transportation of construction material and equipment at the Contractor's expense. Space required surface transportation must be coordinated through the USAKA Transportation Branch (CSSD-KA-LS) at least 10 working days prior to the Contractor's actual shipping requirement. Information concerning travel times and cargo capacities of the available USAKA marine vessels is listed at the end of this section.

(c) Weekly scheduled round trip surface transportation is operated by USAKA between Kwajalein, Meck and Roi Namur. This scheduled transportation is available to the Contractor for transporting construction material and equipment on a space available basis, without charge to the Contractor. NOTE: Cargo deck space for space available shipment of construction material and equipment is very limited since USAKA shipments have priority.

(d) Air transportation of Contractor personnel by fixed-wing aircraft to Roi Namur or by helicopter to other outer islands is permissible on a space available/no priority basis, without charge to the Contractor.

[End of Statement]

K-14 HOUSING FACILITIES - CONTRACTOR PROVIDED MANCAMP (JAN 1999)

(a) The Government will not provide housing for the Contractor's personnel. Housing shall be provided by the Contractor. A mancamp site is available on Kwajalein. The approximate location of the mancamp site is on the map at the end of this section. The mancamp shall be approved by the Contracting Officer.

(b) Spaces for contractor family housing trailers within the existing family housing trailer area on Kwajalein Island are limited to a maximum of three trailers (single wide). Trailers shall be new and not exceed 12' x 60'.

(c) Any quarters other than those addressed in subparagraph (a) above which are required by the contractor must be provided by the Contractor. All work required to hook up to existing utilities is to be performed by the Contractor as approved by the Contracting Officer. Temporary quarters will be removed by the Contractor upon completion of the project (final inspection/BOD), and the site restored to the condition in which it was found by the Contractor. Utility hook-ups are available in the vicinity of the mancamp; however, the Government makes no representation as to the condition and adequacy of the existing utilities in the mancamp areas.

(d) The Contractor shall adhere to all rules and regulations enforced by USAKA that may pertain to housing personnel in mancamp sites. Additionally, the Contractor's temporary quarters will be constructed and maintained in accordance with the following:

- (1) EM 385-1-1 Corps of Engineers "Safety and Health Requirements Manual".
- (2) Federal Manufactured Housing Construction and Safety Standards (FMHCSS)
- (3) National Electric Code
- (4) Uniform Plumbing Code
- (5) Uniform Building Code
- (6) NFPA 101 Life Safety Code

(e) The Contractor shall submit to the Contracting Officer a plan of the temporary quarters installed, which shows all utilities, within 30 days after installation of the temporary quarters.

(f) Third country Nationals will not be housed on lands that are under the control of the U.S. Army Kwajalein Atoll.

(g) After final inspection/BOD, temporary quarters shall be dismantled or demolished at the Contractor's expense and properly disposed of. The mancamp area shall be restored to the condition in which found by the Contractor, including restoration of vegetation to preexisting type and density.

K-15 COMPLIANCE WITH LOCAL LAWS

(a) Contractor and subcontractor employees, and their dependents if authorized, shall be governed by, and subject to the military rules and regulations, and to the laws and regulations of the Marshall Islands and its political subdivisions applicable to the islands on which construction under this contract is performed. Infraction of such laws and regulations or such other conduct as may render employees and dependents undesirable, may be cause for removal from the project site or the Marshall Islands. The Contractor shall take immediate action in such matters as may be directed by the Contracting Officer. It is the Contractor's responsibility to ensure that all Contractor and subcontractor personnel are thoroughly instructed regarding applicable laws and regulations, and it shall be his responsibility to effect adequate policing of such personnel to avoid infractions.

(b) Dependents of employees who are not usually residents on the islands on which construction is performed will be authorized to accompany such employees under applicable Marshall Islands' laws and regulations only if approved by the Contracting Officer in consideration of the availability of facilities for their residence.

[End of Statement]

K-16 DEPENDENTS

Dependents of Contractor personnel, either United States citizens or alien residents of the U.S., will be permitted to reside only on Kwajalein Island, unless otherwise authorized by the Commander, USAKA and by the Contracting Officer.

[End of Statement]

K-17 MEDICAL AND DENTAL SERVICES

Medical and dental facilities will be made available to Contractor personnel at Kwajalein Island only at the current established rates. The Contractor will be responsible for insuring payment of medical and dental

bills incurred by his employees and their dependents.

[End of Statement]

K-18 POSTAL FACILITIES

Postal service, in accordance with regulations promulgated by the U.S. Postal Service, will be available at Kwajalein Island only.

[End of Statement]

K-19 MANAGEMENT AT JOBSITE (NOV 1998)

(a) General. The superintendent provided by the Contractor under the Contract Clauses and Special Contract Requirements paragraphs shall be an individual or individuals fully qualified by training and experience to provide competent and authoritative overall management of the project in all its aspects and at all times during the progress of the work. The name or names of such individuals and the qualifications of each shall be submitted to the Contracting Officer for review prior to commencement of any work at the site. The Contractor's superintendence force shall be satisfactory to the Contracting Officer.

(b) Authority. The superintendent or superintendents shall be vested with full authority to act for the Contractor at the site to provide for smooth and decisive management of the job without the necessity of reporting to the Contractor's "home office" for decisions. He shall be authorized to execute modifications for amounts up to at least \$100,000 and to negotiate and accept for the Contractor time extensions granted under the various clauses of the Contract Clauses. The management responsibilities of the superintendent shall include complete supervision of the Contractor work force, supervision over the work of all subcontractors, coordination of all subcontract operations, close adherence to the Network Analysis System or Progress Charts provided under the Special Contract Requirements paragraph, management of a field office staff to provide support to accomplish contract requirements and implementation and enforcement of the Contractor's Safety Program.

(c) Availability. The Superintendent or superintendents shall be available at the sites of work at all times during working hours to direct and manage the project(s) to assure that schedules are being maintained and that the jobsite conditions are in accordance with contract requirements, as well as to receive directives, instructions, or complaints from the Chief, Quality Control or the Contracting Officer so that prompt and satisfactory action is insured.

(d) Daily Progress Report. The Contractor's supervisory staff shall provide a daily progress report outlining the equipment on-site, including equipment being repaired, manpower, utilization of manpower and equipment for each work activity and work performed on each jobsite keyed to the index of the Technical Specifications. This report is separate from and in addition to reporting requirements under Quality Control. The report shall be furnished in two copies (one reproducible by standard office copier equipment) at the jobsite to the Government with the Quality Control report not later than the first working day from the day the work was performed. Negative reports are required for all calendar days during which there is no activity on the project site with an explanation why no work was performed. Administrative work activities shall be included within the report. The reports shall be typewritten in an acceptable format to the Government.

[End of Statement]

K-20 POL PRODUCTS

(a) Bulk POL products will be made available to the Contractor from Government sources in the Kwajalein Atoll for use as required in his operations. It will be the Contractor's responsibility to make arrangements and payments pursuant to established Government procedures.

(b) Payments by the Contractor to the Government will be made on a monthly basis, or other convenient basis, at the discretion of Contracting Officer.

(c) The procedure provided for herein (i) is authorized by Public Law 85-804, 50 U.S.C. 1431--1435, and Executive Order No. 10789, (ii) is justified because of the isolated location of the contract work and the nonavailability from a local commercial source and the availability from Government sources of POL Products, and (iii) will facilitate the National Defense.

(d) POL products will be provided by the logistics support Contractor as required at POL dispensing facilities in Kwajalein Island.

[End of Statement]

K-21 ORDNANCE DISPOSAL

The island(s) on which construction is to be performed were occupied by military forces during World War II and were within the combat zone. A demolition crew has removed visible ordnance from the islands. However, additional unexploded ordnance including bombs, shells, etc., may be encountered during the Contractor's operations. Should any such objects be encountered, the Contractor will take immediate action to prevent disturbance of or tampering with such objects, and shall report the discovery to the USAKA Security and Law Enforcement Contractor and the Explosive Ordnance Disposal (EOD) office for disposal action.

K-22 STORM PROTECTION

Should warning of winds of gale force or stronger be issued, the Contractor shall take every practicable precaution to minimize danger to persons, to the work, and to adjacent property. These precautions shall include, but are not limited to, closing all openings as required to protect work in place, removing all loose materials, tools, and/or equipment from exposed locations, and removing or securing scaffolding and other temporary work.

[End of Statement]

K-23 CHOICE OF LAW

All rights, obligations and remedies are governed by the terms and provisions of this Contract.

The validity and interpretation of the terms and provisions of this Contract and all rights, obligations and remedies thereunder shall be construed in accordance with the laws of the United States of America.

[End of Statement]

K-24 FOREIGN CONSTRUCTION MATERIALS - KWAJALEIN

The following foreign construction materials are allowed in the performance of this contract.

- (1) Structural Steel
- (2) Reinforcing Steel
- (3) Cement and cement products
- (4) Metal fasteners (nails, nuts/bolts, screws)
- (5) Bulk construction materials: sand, gravel, other soil materials, stone, concrete masonry units, ready-mixed asphalt, portland cement concrete and fired brick.
- (6) Electrical and plumbing conduits (pvc, galv. emt, etc.)
- (7) Precast panel members

[End of Statement]

K-25 MECHANICAL DIGGING PERMITS (NOV 1998)

a. To protect piping, electrical, or communications gear, no mechanical digging shall be performed without a Mechanical Digging Permit. The Contractor shall submit a drawing/sketch of the work area with its application for a permit, utilizing KLS Form 1310-A at the end of this section. The Contractor must ensure that the Heavy Equipment Operator maintains in his possession the drawing/sketch of the work area and the Mechanical Digging Permit onsite during the digging operation. It shall be the responsibility of the activity completing the project to update the drawing/sketch before returning it to the Facilities Operation and Maintenance (FOM) office of issue.

b. It shall be the responsibility of the Logistics/Engineering Contractor (LEC) Production Scheduler for FOM at Kwajalein and the Scheduler for Roi Namur FOM to provide underground locating services pertaining to the Mechanical Digging Permits at USAKA. The above individuals shall have the responsibility for obtaining the necessary signature approvals for the KLS Form 1310-A before authorizing any mechanical digging operation.

c. Point of contact with LEC for Mechanical Digging Permit initiation and coordination is:

1. Kwajalein - Mr. John Hefner, extension 5-3311
2. Roi-Namur - Ms. Anita Davis, extension 5-6361

[End of Statement]

K-28 MARSHALLESE INCOME TAX

Contractor is advised that, under the terms of Article V of the Status of Forces Agreement, United States contractor personnel and dependents who are also United States contractor personnel are not exempt from a personal income tax generally applicable within the Marshall Islands up to a level of five percent of their annual income derived from their employment in the Marshall Islands by United States contractors. Marshallese personnel are subject to income tax generally applicable in the Marshall Islands, without limitation. Accordingly, the contractor must withhold income tax from the compensation paid to all employees, as appropriate, and in accordance with applicable laws of the Republic of the Marshall Islands.

With respect to United States taxes, the Contractor must make its own determination, considering its own legal status, as to whether withholding or payment of such taxes is required.

[End of Statement]

K-29 RESTRICTIONS ON HAULING

(a) Hauling of materials through the family housing area at Kwajalein shall be restricted to the following times:

- (1) When school is in session - 0830-1130 hours and 1230-1430 hours.
- (2) When school is out of session - 0800-1130 hours and 1230-1630 hours.

(b) Hauling of materials using vehicles which are 10 feet wide or greater will require convoy procedures. The Contractor shall provide a lead vehicle and rear escort for the convoy; the rear escort shall be responsible for cleaning up any convoy debris. Radio communication between the convoy and the Bucholz Army Airfield control tower will be required to coordinate convoy movements near the airfields on Kwajalein. The Contractor shall submit written convoy procedures to the Contracting Officer at least 14 days prior to the onset of operations.

[End of Statement]

K-30 MESSING FACILITIES

(a) Existing messing facilities on Kwajalein and Roi-Namur will be made available to Contractor employees in connection with the prosecution of the work under this contract. Meals will be served to Contractor employees cafeteria style in the Government-operated mess halls at the current established rates.

(b) The Contractor will be responsible for payment of messing bills incurred by his employees.

(c) Contractor messing facilities will be maintained in accordance with the most current EM 385-1-1, Corps of Engineers "Safety and Health Requirements Manual". Refer to paragraph entitled "Accident Prevention Plan" in Section 00800 to determine the latest version of the manual.

(d) If the Contractor desires to purchase bulk food supplies from USAKA, he must request supplies at least 90 days prior to actual requirements.

(e) Messing rates are contained in the Financial Policy & Rate Manual.

[End of Statement]

K-31 WARRANTY IMPLEMENTATION

1. The Contractor shall designate a company representative to implement the warranties included in this contract. This representative shall be stationed on Kwajalein throughout the entire warranty period and must possess the capability and knowledge required to correct all warranty deficiencies. The Contractor may designate different representatives for separate specialties of work. If approved by the Contracting Officer, any other Corps construction contractor performing work on Kwajalein may be utilized for warranty implementation.

2. The name, address, telephone number of the representative(s), and nomenclature of warranty item shall be submitted to the Contracting Officer's representative at least 30 days prior to the contract completion date or beneficial occupancy of the work or part thereof. For the purposes of paragraph f of the warranty clause, a reasonable time shall be considered to be as follows:

- a. Seven (7) calendar days from the receipt of a written notification of any failure, defect, or damage caused by a warranty defect of such nature that the work remains functional or habitable or both, as applicable.
- b. Twenty-four (24) hours for any failure, defect or damage caused by a warranty defect which renders the work nonfunctional or uninhabitable or both, as applicable. Response in this instance starts from receipt of verbal notification from a Government authorized representative. Written confirmation will follow the initial verbal request.
- c. One-half (1/2) hour for any failure, defect or damage caused by a warranty defect which creates a health and/or safety hazard that could endanger personnel or cause serious property damage. This type of warranty item shall be categorized as EMERGENCY WORK. Response in this instance starts from receipt of verbal notification from a Government authorized representative. Written confirmation will follow the initial verbal request.
- d. The Contractor shall place equipment warranty stickers on all warranted equipment in the location designated by the Contracting Officer's representative. The Contracting Officer will furnish the stickers and the Contractor shall fill out the required information and place the stickers on the equipment.
- e. No contractual warranty arrangements with the USAKA operating contractor will be allowed.

[End of Statement]

K-32 RATES FOR VARIOUS PRODUCTS AND SERVICES

- a. Airlift of cargo to Kwajalein on Air Mobility Command (AMC) flights out of Hickam AFB, Hawaii, requires the prior assignment to the Contractor of certain identification codes by Government agencies. Upon award of contract, a Contractor anticipating cargo airlift is advised to submit an early request for assignment of the codes. Rates for passenger and cargo on AMC flights out of Hickam AFB, Hawaii, may be obtained from Unit Movement, Directorate of Logistics, United States Army Garrison, Hawaii, at (808)438-9756.
- b. Various products and services are available at Kwajalein at pre-determined rates from the U.S. Army Kwajalein Atoll (USAKA) Logistic Support Contractor (LSC). The rates are published in the Financial Policy and Rate Manual, U.S. Army Kwajalein Atoll, and are subject to change. However, bulk POL (petroleum, oils and lubricant) prices are subject to change at any time. Pursuant to the above-mentioned Manual, there is an advance deposit requirement on users of the various products and services. A copy of the Manual is located at the end of this section. Any conclusions or interpretations made from the data in the Manual are the Contractor's responsibility.

Some items of particular interest to Contractors are given below.

- (1) Bulk POL - Price for bulk POL products are based on prevailing rates, periodically updated.
- (2) Telephone -
 - (a) Current rates for basic services are given in the Financial Policy and Rate Manual.
 - (b) Non-direct access to Department of Defense existing AUTOVON (Automatic Voice Network) telephone service, between Oahu, Hawaii and Kwajalein (both directions) will be provided to the Contractor at no charge. Non-direct access to AUTOVON by the Contractor shall be restricted to essential communication required in the performance of this contract.

(3) Housing Rental Rates -

Current rates for housing on Kwajalein Island are given in the Financial Policy and Rate Manual. The specific types of housing are subject to availability and will be assigned at the discretion of USAKA.

(4) Dining Rates -

Current rates for dining on Kwajalein and Roi-Namur are given in the Financial Policy and Rate Manual.

(5) School Tuition -

The USAKA school consisting of an elementary school encompassing kindergarten through sixth grade and a junior-senior high school is an accredited member of the North Central Association of Colleges and Secondary Schools. School tuition is determined annually. Either the sponsoring organization or the individual must reimburse USAKA at the tuition rate.

c. Equipment and facilities owned by the U.S. Army Kwajalein Atoll and operated by the USAKA Logistic Support Contractor (LSC) may be available at a cost to the Corps of Engineers Contractor on a non-interference basis. Corps of Engineers Contractor's use of USAKA equipment shall not interfere with USAKA/LSC operations. Any USAKA equipment rented shall be subject to recall by USAKA/LSC for their use at any time. Arrangements including determination of cost and maintenance responsibilities are a matter between the Contractor and USAKA/LSC, not the Corps of Engineers. These arrangements are not covered in the Financial Policy and Rate Manual. The Contractor is advised not to count on this type of support. The Corps of Engineers and USAKA will not be liable for any delay resulting from the use of USAKA equipment.

[End of Statement]

K-33 SAILING INSTRUCTIONS, PORT OF KWAJALEIN

1. The following is a listing of conditions which must be met prior to U.S. Army Kwajalein Atoll (USAKA) accepting marine cargo for discharge at either Kwajalein, Roi-Namur, or Meck Islands. They are as follows:

a. Vessel must meet the International Safety of Life at Sea Safety Standards (SOLAS). Vessel Master must be capable of presenting, upon request of the USAKA Pilot, SOLAS safety certificate.

b. Vessel Master must accept the USAKA Pilot as outlined in U.S. Sailing Directions for the Pacific Islands, volume 126, page 134.

c. Upon request of the USAKA Pilot, the Vessel Master must present 3 copies of the crew manifest and certificate certifying that the crew is free of communicable diseases. They will also be required to request free pratique on arrival.

d. Vessel Master must contact the USAKA Harbor Control 72 hours prior to arrival at the Pilot station. The USAKA Harbor Control can be reached on frequency 2716.0 kilocycles (USB) or Kwajalein Tech Control on MHz 82961.0 (USB). Vessel Master must provide USAKA Harbor Control with the following information 72 hours prior to arrival: (1) Draft fore and aft, (2) Nature of cargo to be discharged/loaded, (3) Plus any change in logistic requirements which would include

provisions for water and fuel, and any special cargo handling requirements. Vessel Master will update draft data not later than 24 hours prior to arrival at the Pilot station.

- e. Vessel Master is cautioned that maximum draft is 27 feet at the port of Kwajalein.
 - f. Vessel must be insured by a recognized marine underwriter such as Lloyd's of London. Insurance certificates may be requested upon arrival by USAKA Pilot.
 - g. Vessel must be of internationally recognized register. Vessel Master may be requested to present registration certificates to USAKA Pilot.
 - h. Ship's crew assigned to assist with discharge/loading of cargo must comply with USAKA safety regulations which requires use of approved hard hats, safety shoes, and gloves.
 - i. Vessel must have internationally registered 406 MHz Emergency Position Indicating Beacon(s).
 - j. Vessel Master must comply with direction from the USAKA Pilot regarding Pilot station, use of mooring facilities, and lagoon entry access.
 - k. Vessel Master must insure that barge and tow complies with American Bureau of Standards (ABS) and that ABS certificate is current and available for inspection by the USAKA Pilot upon request.
 - l. Vessel Master will be responsible for repatriation of crew members from Kwajalein. Vessel Master must insure that adequate U.S. currency is available for same.
 - m. Vessel Master may be required to settle all outstanding debts accumulated while in port at the direction of the vessel's agent.
 - n. USAKA Marine Department and Pilot may be contacted telephonically at (805)238-7994, extension 2182, facsimile extension 1814.
 - o. Vessel's agent will be required to repatriate USAKA Pilot should Pilot be required to remain with the vessel under circumstances which are beyond his control.
 - p. The port of USAKA is a drug-free facility. All vessels will be inspected by a drug dog team prior to being cleared into the port.
2. The USAKA points of contact are Marine Operations, DSN 480-3421, and Engineering, DSN 480-3779.

[End of Statement]

K-34 TRANSPORTATION AND PROCESSING OF PERSONNEL, MATERIALS AND EQUIPMENT

The Contractor shall be responsible for transportation of his personnel, materials, supplies and equipment. In the event Air Mobility Command (AMC) furnished facilities are available to move or process such personnel, materials, and equipment, the Government agrees to make available such transportation to the extent possible. However, it will be the Contractor's responsibility to make arrangements and payments for such transportation pursuant to established AMC procedures.

[End of Statement]

*K-12 COMMUNICATION FACILITIES

(a) Arrangements may be made through the Contracting Officer or his authorized representative for the installation of a limited number of telephones at desired locations on Kwajalein. There will be an installation charge and monthly service charge for each telephone instrument, based on prevailing rates, and the Contractor shall make payment for such services in a manner as determined and approved by the Contracting Officer.

(b) Approved communication facilities for safety purposes will be provided by the Contractor with work parties at isolated locations.

[End of Statement]

*

availability of funds." Appropriate funding documentation must be provided by range customers to USASSDC normally 90 days in advance of the scheduled support. Requests for exception will be made through the Commander, Kwajalein Missile Range.

j. LSC Services, Materials, and Supplies to Individuals - The above procedures do not apply to cash sales to individuals which are generally collected prior to or at the time of delivery. Special provisions to the policy governing billing and cash collection procedures are set forth below:

(1) Medical and dental bills (emergencies excepted) under \$50.00 are to be paid at the time the services are provided. Work related claims for Workers Compensation will be reported in accordance with current U.S. Department of Labor regulations.

(2) Services over \$50.00 such as school tuition, housing, medical, dental, catering, services provided by work order or other services where cash transactions are clearly impractical will be billed by the LSC to the individual.

(3) Monthly telephone charges will be billed each month in advance (installation and relocations charges excepted). However, if telephone bills are not paid within 60 days after the billing date, service will be discontinued. A regular installation charge will be required for service to be restored.

(4) All items billed are due and payable thirty (30) days after billing date with the exception of inpatient medical charges (see 1-3j (6) below). After 30 days the bills become delinquent and a penalty of \$10.00 or interest applied to the amount of the indebtedness at the rate established by the Secretary of the Treasury IAW 31 USC 3717 (a)(1), as of the date the amount became due or if the amount is in dispute when that amount becomes liquidated (determined), whichever is greater. This penalty will be added each month until the indebtedness is satisfied. Exceptions may be granted when a billing is in dispute and resolution is being pursued actively.

(5) Individuals not responding within two months to delinquent accounts will be placed on a strictly cash basis for all services provided until the delinquent amount is paid in full.

(6) Inpatient medical charges will not be considered delinquent until four (4) months after the date of the first invoice to allow sufficient time for submission and payment of insurance claims. After that time, the provisions of 1-3j (4) above will apply.

(7) Charges for non-standard marine fuel and after hours use of the tractor for movement of marine craft will also be billed by the LSC to individuals who have established accounts for such purposes. Accounts are established by payment of a \$100 refundable deposit at the LSC Finance Office.

k. Personal Checks - A charge of \$10.00 will be assessed for each returned personal check.

1. Standard Rates - When a standard rate does not exist, the Logistic Contractor will use the following procedure to determine the amount to be billed. This will apply to MRTFB customers and cash customers. Material will be at actual cost plus applicable load. Direct Labor will be the average direct labor rate for each category of labor. This will be increased by the actual indirect labor rate (Fee, G&A, Fringe and Management) for the logistic contractor plus a rate for the allocated support cost (Education, Housing, Medical, Utilities, Maintenance and Amenities.) The indirect rate will be taken from the CDRL Work Sheet, Section III ****RECAP OF ALL LOADING COMPONENTS. The allocation rate will be arrived at by using the dollars allocated to the LSC in Step 4. of the allocation procedures, Chapter 3, para. 3-3d. This is the logistic contractor's share of the allocable cost. To arrive at logistic contractor's direct base, the Range User Labor Base costs in Section III, CDRL AP06 Work Sheet will be used. Compute the rate by dividing the allocated costs (Step 4) by the direct labor base (Range User Labor Base).

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FINANCIAL POLICY AND RATE MANUAL CHAPTER 2 RATES

2-1. GENERAL. This chapter sets forth rates for Logistical Support in effect at U.S. Army Kwajalein Atoll. Any applicable allocated support cost is included in the rate unless specifically indicated otherwise. The Logistics Contractor will request contracting officer approval to revise these rates based on actual cost of services and/or as new services are implemented or USAKA policy requires. Upon approval by the contracting officer, this manual will be updated by deleting the changed page and replacing with like numbered page.

2-2. AVIATION SERVICES.

a. Use of Aircraft

(1) Dedicated Aircraft - per flying hour

Aircraft type	DOD Rate	OGA Rate	Others Rate
DHC-7	\$3140	\$3454	\$3800
UH-1	\$2627	\$3333	\$3500

(2) Passenger Service - per flying hour

Aircraft type	DOD Rate	OGA Rate	Others Rate
DHC-7	\$63	\$69	\$76
UH-1	\$239	\$303	\$318

(3) Passenger Service - space available

Aircraft type	DOD Rate	OGA Rate	Others Rate
DHC-7	\$0	\$0	\$10 *
UH-1	\$0	\$0	not allowed

* This is an administrative charge for one-way trip.

b. Support to Transient Aircraft

(1) Landing, Parking, and Storage Fees

(a) These fees are applicable to commercial aircraft only.

(b) Landing fees are based on the maximum gross take off weight (MGTOW) of the aircraft at the rate of \$1.70 per 1000 lbs. Charges applicable to commercial aircraft routinely transmitting USAKA are as follows:

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Boeing 727	\$268
DC-8	\$447
HS 748	\$79
Dornier 228	\$15

(c) Parking fees are as follows:

MGTOW of aircraft	Parking Fee
under 12,500	\$15
12,500-39,999	\$30
40,000 or more	\$60

Charges applicable to commercial aircraft routinely transmitting DSARA are as follows:

Boeing 727	\$60
DC-8	\$60
HS 748	\$60
Dornier 228	\$15

No parking fees are charged for the first six hours. Fees after that period are charged per 24 hour period or any fraction thereof.

(d) Storage of commercial aircraft is not available.

(2) Ground Services

(a) Charges applicable during standard hours of operation (0730 - 2200 daily)

Aircraft type	Cargo Only	Passenger Only	Passenger and Cargo
C5A/similar	\$311	\$554	\$646
C141/similar	\$311	\$554	\$646
C130/similar	\$250	\$300	\$390
C12/similar	NA	\$166	NA
DC-8/similar	\$311	\$434	\$646
727/similar	NA	\$434	NA
Dornier 228	NA	\$191	NA
HS 748	NA	\$191	NA

(b) Charges applicable during nonstandard hours of operation (2200 - 0730 daily):

Aircraft type	Cargo Only	Passenger Only	Passenger and Cargo
C5A/similar	\$492	\$654	\$746

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C141/similar	\$492	\$654	\$746
C130/similar	\$350	\$400	\$540
C12/similar	NA	\$300	NA

DC-8/similar	NA	\$783	\$746
727/similar	NA	\$783	NA
Dornier 228	NA	\$293	NA
HS 748	NA	\$293	NA

(3) Refueling Charges

(a) Aircraft with a Defense Fuel Supply Center (DFSC) identification plate will be charged directly through DFSC.

(b) Aircraft without a DFSC identification plate will be charged the cost of fuel (see paragraph 5) and a refueling service charge as follows:

Aircraft type	Standard Hours	Nonstandard Hours
DC-8/similar	\$40	\$111
727/similar	\$40	\$111
Dornier 228	\$40	\$111
HS 748	\$40	\$111

(4) Charges for nonroutine services (e.g. maintenance) will be billed on an actual labor-hour basis plus applicable load factor. Materials will be billed at inventory cost plus applicable load factor.

2-3 MARINE SERVICES

a. Marine Vessels

(1) General. All rates include crew. Roundtrip cost will be charged to the organization requesting the vessel. Other organizations may move cargo on these vessels space available at no charge.

(a) Operational time is the actual time underway and will be billed to the next full hour for any portion of an hour.

(b) Standby time is the time from landing to departure with engines shut down. Additionally, each trip will be charged for one hour prior to and one hour after any use of a vessel, with the exception of sanctioned private organizations and other official community service programs. This time is used for engine warm up, machinery/safety checks and setup/teardown of required equipment. If extra standby time is required to on-load/off-load space available cargo, such time will be charged to the organization requesting shipment of that cargo.

(c) Laytime is time during which the vessel is out of home port but is non-operational and is manned only with a watch while in a port at another location. Laytime will be charged to the customer if the delay in return is due to customer requirements.

(d) Daily Rates apply when a vessel is used for a 24 hour period.

(2) Usage Charges - Cost per hour

(a) Base Support Rates:

	Operational Rate	Standby Rate	Daily Rate	Laytime	Recreation Rate Running/Standby
Catamaran	\$336.00	\$255.00	None	\$217.00	\$248./167.
LCM	161.00	128.00	None	113.00	115./89.
1466 LCU	231.00	202.00	None	177.00	160./127.
2000 LCU	281.00	210.00	6030.00	171.00	210./134.
Tug	631.00	543.00	15166.00	231.00	N/A
Barges	124.00	124.00	2976.00	0	N/A
Crane Barge	109.00	61.34	2617.00	88.00	N/A
Combat Boat	150.00	95.00	3600.00	55.00	N/A
Worthy	758.00	653.00	14116.00	370.00	N/A

(b) All other activities - Range customers, DOE, Navy RMI, etc.

	Operational	Standby	Daily	Laytime
Catamaran	\$419.00	\$318.00	None	\$217.00
LCM	201.00	161.00	None	112.00
1466 LCU	289.00	253.00	None	178.00
2000 LCU	352.00	263.00	\$7537.00	171.00
Tug	695.00	597.00	16680.00	231.00
Barges	136.00	136.00	3264.00	0
Crane Barge	131.00	74.00	3141.00	88.00
Combat Boat	180.00	114.00	4320.00	55.00
Worthy *	1016.00	911.00	18762.00	370.00

*Based on 60 days of customer operations per fiscal year. Customer use exceeding 60 days will result in lower costs per day. There are no known base support requirements for the

Worthy, but any use of the Worthy for base support will reduce the customer costs accordingly.

(c) Deleted

(3) Unofficial travel between Kwajalein and Roi Namur is \$3.50 each way.

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(4) Port Services (at Kwajalein Island)

(a) Pilot/Riding advisor services is \$700.00 per round trip with delivery of pilot included in cost.

(b) Line handling at Kwajalein pier is \$150.00 per callout.

(5) Stevedoring and drayage costs are actual labor and materials plus appropriate load factor (Chapter 3).

(6) Base support use of recreational boats - When it is necessary to use recreation boats for base support purposes, base support funds may be used to reimburse the recreation fund at the same rates as those established for private individuals.

2-4. PRINTING AND REPRODUCTION

a. General - Any copy reproduction work for which no rate is established will be charged the actual direct and indirect costs and material costs plus the allocated support costs IAW FPRM, Chapter 3.

	DoD Rate	OGA Rate	Others Rate
b. Offset Printing - Cost per 1st 100 copies/2nd 100 copies (or fraction thereof)			
8.5"x11" Bond (white)	\$5.50/2.25	\$5.60/2.30	\$5.70/2.35
8.5"x11" Bond (color)	\$6.10/2.75	\$6.20/2.80	\$6.30/2.85
8.5"x11" Color cover	\$8.50/5.00	\$8.65/5.15	\$8.80/5.30
11"x7" Bond (white)	\$5.50/2.25	\$5.60/2.30	\$5.70/2.35
11"x7" Color cover	\$12.00/9.00	\$12.50/9.50	\$12.95/9.95

c. Xerox Copies - Cost per copy

8.5"x11"	\$0.041	\$0.043	\$0.045
8.5"x14"	\$0.044	\$0.045	\$0.046
18"x24"	\$0.400	\$0.430	\$0.455

d. Ozalid Prints

(1) Sepia 29"x42"	\$2.90	\$3.10	\$3.20
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(2) Blue Line 29"x42"	\$1.33	\$1.35	\$1.50
(3) Polyester Film 29"x42"	\$4.42	\$4.45	\$5.20

c. Data Processing

CDC 810 and peripherals	\$260 per system/wall clock hour	\$630 per system/wall clock hour	\$1440 per system/wall clock hour
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All other items (i.e., magnetic tapes, disk packs, software support) will be charged at the actual cost per GSA Schedule.

f. Flat Rate Fees

(1) Offset	
(a) Additional Image Layout	\$3.50
(b) Cutting per 100	\$3.50
(c) Ink other than black	\$13.00
(2) Xerox	
(a) Collate and staple 10 books (Max 25 pages)	\$3.00
(b) Collate and cerlox bind 10 books	
Up to 7/16" binders	\$3.50
1/2" to 3/4" binders	\$3.75
1" to 2" binders	\$4.25
(c) Collate, 3 hole punch and pressboard bind 10 books	\$3.00

2-5. UTILITIES

a. Potable Water: \$9.00 per thousand gallons for all users. Transportation, if required, is billed separately.

b. Electrical Power.

(1) Standard Rates

Kwajalein	\$0.124/KWH
Roi-Namur	\$0.161/KWH
Ennylabagan	\$0.215/KWH

(2) A demand charge based on actual costs for operation and maintenance of additional generating capacity for a specific user may be required.

2-6. BULK POL - Prices for bulk POL products are the standard prices disseminated by CDRUSAGMPA and applicable DFSC price

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bulletin. USAKA retail POL customers (any customer other than authorized DOD aircraft using approved DFSC Identiplate (DD 1896) and/or authorized DOD Marine Vessel using DD 1149) will be billed an additional \$0.03 per gallon handling charge.

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2-7. SERVICES TO INDIVIDUALS, ACTIVITIES, AND BUSINESSES

a. Housing

(1) Permanent Housing

(a) Housing rates include utilities (except telephone) and furnishings.

(b) The rental period is the calendar month commencing on the first day of each month. Personnel commencing occupancy or vacating housing on a day other than the first day of the month will be charged a pro rata share of the monthly rent based upon the number of days of actual occupancy during the month. In calculating pro rata amounts, a 30 day month will be used as the standard rental period regardless of the number of days in the actual calendar month. The first day of occupancy will be charged as a rental day and the vacating day will be considered a non-rental day.

(c) Accompanied military personnel and bona fide bachelors assigned to USAKA and occupying unaccompanied personnel housing or concrete family housing will pay the published rental rate or 75% of quarters allowance (i.e. BAQ), whichever is less. Military personnel occupying facilities 112-139, 402 and 404 will pay the published rental rate or 100% of quarters allowance, whichever is less. Military personnel in an unaccompanied status as a geographical bachelor will be provided housing at no cost to the individual.

(d) Individual personnel employed by the ISC, SLEC, METS, and IRE Contractors, as well as MIT/LL and FAA personnel are not required to pay rent for housing as it is Government furnished under these contracts/agreements. Also, U.S. Government Civil Service personnel assigned to USAKA are not required to pay rent as they do not receive overseas housing allowance while stationed at USAKA.

(e) All others are required to pay the established rental rate. Payment may be made by the individual or the sponsoring organization as established in the applicable

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agreement or contract. When rent is paid by the sponsoring organization, billing will be made for housing assigned. Billing begins upon assignment if the unit is vacant or when vacated by the previous occupant.

(f) Billing for housing will be made at the end of the month except when housing is surrendered during the month.

(g) Monthly Rental Rates

Bachelor Quarters - Kwaialein

Pacific Barracks (Bldg 704)

Two per room	\$160/person
Three per room	\$140/person
Four per room	\$120/person
Six or seven per room	\$110/person
Wing A (open bay)	\$100/person

Ocean Barracks (Bldg 560, 3 per room)	\$140/person
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Surf, Palm, Shell, Coral, Reef,
& Sands BQs (Bldgs 501 and
561-565)

One per room with bath	\$330/person
Two per room with bath	\$250/person
Three per room with bath	\$190/person
One per room with shared bath	\$250/person
Two per room with shared bath	\$160/person
Three per room with shared bath	\$120/person

Trailers

One per trailer	\$540/person
Two per trailer	\$270/person
Three per trailer	\$180/person

Bachelor Quarters - Roi-Namur

Bldg 8154

One per room	\$160/person
Two or more per room	\$120/person

Bldg 8115	\$120/person
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Bldgs 8011, 8012, 8103
8114, 8017

One per room with bath	\$330/person
Two per room with bath	\$250/person
Three or more per room with bath	\$190/person
One per room with shared bath	\$250/person

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Two per room with shared bath	\$160/person
Three or more per room with shared bath	\$120/person
Bldgs 8211 and 8213	\$500/person
<u>Family Housing</u>	
Facility Numbers 102-106 and 202-241, 402 and 404	
One Bedroom	\$890
Two Bedroom	\$960
Three Bedroom	\$980
Facility Numbers 112 - 139	
Two Bedrooms	\$1030
Three Bedrooms	\$1320
Facility Numbers 401-497 (except 402 & 404)	
One Bedroom	\$ 650
Two Bedrooms	\$ 670
Three Bedrooms	\$ 720
Trailers	\$540

(2) Transient Housing

(a) Rates include utilities, furnishing, towels, linen, telephone access, and custodial services.

(b) The check in time is 1430; check out time is 1200. Personnel checking out after 1200 will be charged for an additional day.

(c) Individual personnel employed by the IRE, LSC, SLEC, METS contractors, MIT/LL and FAA personnel are not required to pay rent for lodging when on official business as it is Government furnished under these contracts/agreements.

(d) Military personnel in a PCS status may occupy transient housing up to three days at housing allowance rates. Extensions may be granted by the Cdr, USARA on a case by case basis.

(e) All other transients are required to pay the established rental rate. Payment may be made by the individual or the sponsoring organization as established in the applicable agreement or contract.

(f) -Deleted-

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(g) Transient Rental Rates:

Kwajalein Island	Per Person	Daily Rates	
		1st Family Member	Other Family
DV Room, 1 king bed	\$85.00	\$10.00	-
DV Trailer	70.00	25.00	5.00
Kwaj Lodge -Single Rm,D/B,PB	60.00	10.00	-
TDY Trailer	55.00	25.00	5.00
Other UPH -Single Rm,PB	50.00	10.00	-
Kwaj Lodge -Single Rm ,SB	45.00	10.00	-
Other UPH - Single Rm, SB	40.00	5.00	-
Kwaj Lodge-Dble Rm,2 single beds,SB	30.00	-	-
Ocean BQ, 3 person, SB	20.00	-	-
Vacation Trailer *	20.00	5.00	5.00
Vacation Rm, Sgl/Dbl,SB*	15.00	5.00	-
PBQ, 2nd Floor, 7 person	10.00	-	-
PBQ, 3rd Floor, open bay	6.00	-	-

Roi-Namur Island

DV Trailer	70.00	25.00	5.00
Suite, private bath	70.00	25.00	5.00
Trailer	55.00	25.00	5.00
UPH-Single Rm, PB	50.00	10.00	-
UPH-Single Rm, SB	40.00	5.00	-
Two person trailer	30.00	-	-
Vacation Trailer*	20.00	5.00	5.00
Vacation UPH-Dbl Room, SB	15.00	5.00	-
20 Person Facility	6.00	-	-

D/B= Double Bed; PB=Private Bath; SB=Shared Bath

* Kwajalein and Roi-Namur residents only.

Note: Bicycle Rentals \$5.00 per day.

b. Dining Rates for Base Support Dining Facilities

Meal	Adults	Children under 12
Breakfast	\$4.50	\$2.25
Lunch	5.00	2.50
Dinner	5.00	2.50
Brunch	6.00	3.00
Special Meal	10.00	5.00
Box lunch	3.90	3.90

Family members and guests of personnel residing at USAKA may use base support dining facilities only when authorized by the Commander. There is no charge for children under 3.

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The cost of Government-provided meals for military personnel deployed to USAKA at USAKA's request is \$2.20 for breakfast, \$2.40 for lunch, and \$2.40 for dinner per day per soldier. These soldiers must sign roster at register in lieu of using a meal card.

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c. Communication Services

(1) Telephone

(a) Basic Service - Basic rates do not include toll calls. Charges for a fractional month service will be prorated. A new service, disconnect, or reconnect charge applies when installation or relocation is not required, or when relocation is not for the convenience of the government. NC indicates no charge.

	Monthly Rate		Initial	Disconnect/
	1-Party	2-Party	Installation/	Reconnect
Category of Use	Line	Line	Relocation	Charge

Category of Use

Private Use in Qtrs:

Telephone	\$25.00	\$18.00	NC/\$25.00	NC/\$25.00
Extension	NC	NC	\$25./25.00	NC/\$25.00

Long Distance Service:

\$1.40 per call for all off-island calls. If the call can not be completed, the caller should notify the operator and the \$1.40 will not be charged. This includes collect, 1-800, 1-900, and all credit card calls, regardless of circuits involved. This is in addition to the cost of the toll billed on the appropriate credit card by the commercial carrier. This rate will fluctuate based on call usage, additional equipment costs, and other factors beyond immediate control of USAKA. It will be set at a minimum of every 6 months by the USAKA Telecommunications Task Force. It is anticipated that this rate will fluctuate in the \$1.30 to \$1.60 per call range, although this cannot be guaranteed.

~~Activities and Business Firms~~

Telephone	\$30.00	\$25.00	\$40./\$40.00	NC/\$40.00
Extension	6.00	6.00	\$40/40.00	NC/\$40.00

(b) Special Equipment (in addition to basic service)

Item	Monthly Rate	Installation/ Relocation Charge
Buzzer	NC	\$ 25.00
Extension Bell	NC	35.00
Extension Cord (15 or 20 ft)	NC	20.00
Plug and Jack	NC	25.00
Speakerphone	\$ 20.00	40.00
Six Button Set	10.00	40.00
Call Director	30.00	40.00
Telephone/Intercom System*	200.00	400.00

*System is five 6-button phones, four lines and intercom

(c) Special Requests (Nonrecurring Charges)

Change of party line to private line. This will be done as private lines are available. NC

Relocation of extension \$25.00

Records change, changing of working phone from the name of one resident to the name of another within five days N/C

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Change from one party line to another for personal reasons. (Requires written request and approval by CSSD-KA-T). \$25.00

(d) Privately owned telephones will be repaired as workload permits at the rate of \$20.00 per hour for labor plus parts.

All telephone charges listed above are IAW with DoD and Army policies.

(e) Non-Subscriber Calling Information
Personal Identification Numbers are available for non-subscribers at a cost of \$15.00 per month.

Call vouchers are available for permanent residents at a cost of \$20.00 per pack of 5. These call vouchers are non-refundable.

Call vouchers are available for transients at the Kwaj Lodge. The cost is \$2.00 per voucher and will be sold singly. These call vouchers are non-refundable.

(2) Telegrams - DELETED

d. School Tuition

(1) The USAKA school system consists of an elementary school encompassing kindergarten through sixth grade and a junior-senior high school which is an accredited member of the North Central Association of Colleges and Secondary Schools. School tuition is determined annually. Either the sponsoring organization or the individual must reimburse USAKA at the tuition rate. (Military and civil service personnel are not charged school tuition as individuals; therefore, their sponsoring organization must reimburse USAKA.) Rates for Marshallese students who are not USAKA residents but are authorized to attend the USAKA school system IAW the Memorandum of Agreement between USASSDC and the Republic of the Marshall Islands are \$75.00 per month per student, grades 1 through 12, and \$35.00 per month per kindergarten students. School tuition is \$2,782 per student for Kindergarten; \$5,564 per student for Elementary (Grades 1-6); and \$7,692 per student for Junior/Senior High School for the 1995-96 school year. School tuition per student will be recommended each year (CDRL AE02) for the following: Kindergarten, Elementary, Jr/Sr High School, KAPS, and SALK.

(2) The child care user fees shall be as follows:

(a) The Kwajalein Atoll Preschool (KAPS) and School Age Latch Key (SALK) hourly fee shall be \$2.40 per hour. All hourly fees paid after the 26th of the preceding month shall be \$2.50 per hour. After the first hour of service, fees can be paid in increments of one-half hour.

(b) KAPS and SALK Program shall offer a reduction for multiple children from one family who attend KAPS and/or SALK. The multiple child or sibling discount will be 20% applied to the least expensive type of full time or hourly care.

(c) Full-time KAPS fees shall be as follows:

<u>Category</u>	<u>Total Family Income</u>	<u>Max Monthly Fee</u>
I	\$0 - 23,000	\$195.00
II	23,001 - 34,000	240.00
III	34,001 - 44,000	290.00
IV	44,001 - 55,000	331.00
V	55,001 +	385.00

Verification of Total Family Income (TFI) will be necessary for families with children in KAPS full time who desire use of the sliding fee scale. Procedures for verifying income levels will include use of DD Form 2652. Housing rates as stated in Chapter 2, Section 2-7 of the Financial Policy and Rate Manual (FPRM) shall be included as income. Any patron not wishing to provide income information will be placed into Category V for fee purposes.

(3) Child Care Fee Payment Policy is as follows:

(a) Payment is due by the 15th of the preceding month. Payment received after the 26th of the preceding month will be charged an additional five percent of the entire care for the month.

(b) Late charge - There is a charge of \$1.25 for each five minutes that children are not picked up after a session. The maximum late charge fee is \$5.00

(c) Credit may be given for excused absences. To receive credit, the parent must call in and inform the office prior to the child's absence. Failure to call the office will result in no credit.

(d) Funding for KAPS and SALK shall continue to be 20% from base support funds and the remaining 80% from reimbursement from user fees and the Recreation Fund.

e. Services by Offsite Specialists - The LSC negotiates a standard rate (usually comparable with Honolulu, Hawaii) with specialists for certain types of services; however, the actual payment transaction is conducted between the individual receiving the services and the subcontractor.

f. Scuba tank inspection, testing, primary charging - \$22.00

(1) Services will be at the convenience of the Fire Department based on workload, personnel, and equipment availability. It shall be the responsibility of the owner to deliver tanks to the station.

(2) Tanks which require cleaning or do not pass inspection requirements will be returned to the owner without hydrostatic testing.

(3) Scuba tank valves will not be inspected or repaired but will be reinstalled in the tank. If new "O" ring is required, the owner must provide it.

(4) Each scuba tank that passes the inspection and hydrostatic test will be charged with 100 psi of filtered dry air prior to return to the owner.

g. Deceased Services. A fee of \$150.00 includes transfer preparation, a transfer case, and transport to ferry or air terminal. Additional charges of cost plus 25% may be incurred for coffin. Charges will be non-reimbursable for LSC employees. Charges for other individuals will be directed to the USAKA employer, RMI, or an individual as applicable.

h. Rental of Vehicles and Bicycles - Vehicle rental rates will be in accordance with current AR 415-35. Minimum charge for rental of any vehicle is \$5.00. Bicycle Rental is \$5.00 per day.

i. Bona-fide non-profit charitable organizations - Services provided will include 25% load factor on all labor and materials for routine work order requests.

j. Ice - Bagged ice at the ice plant is \$1.00 per bag for all customers except the logistic contractor's Facilities Engineering Services.

k. Medical, Dental, and Veterinary

(1) General

(a) The LSC shall provide medical/dental care and services to the following on a non-reimbursable basis:

(1) Active duty military personnel and their dependents

(2) -Deleted-

X

(3) U.S. Department of Labor Job Corps trainees in accordance with the USAKA/USDOL Operational Support MOA. Includes only initial medical examinations/treatment. Additional medical/dental care is reimbursable.

(4) Indigenous residents of the RMI whose health care benefits have been "grandfathered" under the provisions of Article VIII, paragraph 3 of the US/RMI Military Use and Operating Rights Agreement (MUORA) and Contract DASG60-94-C-0067 clause H-12.a. NOTE: Dental care is not a grandfathered non-reimbursable benefit.

(5) -Deleted-

X

(6) -Deleted-

X

(b) The LSC shall provide medical/dental care and services to the following on a reimbursable basis:

(1) Civilian employees, and dependents of the U.S. Government, U.S. Government agencies, including active duty non-Army military personnel, Coast Guard personnel, Department of Defense contractors, and all other civilians including transients.

(2) Indigenous residents of the RMI, other than the grandfathered personnel. Full charges for services shall be billed directly to the RMI. Except in cases of emergency stabilization, provision of services shall be preceded by a letter of authorization from RMI authorities.

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(3) The authorized Peace Corps office will be billed for services provided. Billing action to be supported by DD Form 7 and Peace Corps letter of authorization.

(4) Retired military personnel and dependents.

(5) Tripler Army ~~Medical~~ Center shall be billed for services provided to Active Duty and Active Reserve U.S. Army personnel. Tripler bills shall be accompanied by a letter of verification from the ~~USAKA~~ Medical/Dental evaluator.

(6) Grandfathered indigenous RMI employees shall be charged for dental care received from the USAKA Dental Department.

(2) Medical, Dental, & Veterinary Fees:

(a) Medical, dental & veterinary fees are recommended by Chief Medical Officer (CMO), Kwajalein Hospital and approved by Contracting Officer. A copy of the approved fee tables for all services are available for review at the reception desk at the hospital and dental clinic. General information and rates for some of the more frequently required services are as stated below:

- (1) Medical Supplies: Cost +25%
- (2) Prescriptions: \$3.75 plus (cost plus 20%)
Active duty and active reserve military personnel and their dependents will be charged for medications that are on "special order" that are not available neither on Kwajalein Hospital or the Tripler Army Medical Center (TAMC) formulary.
- (3) Medications and injections: Cost +25% + \$5.00 injection fee.
- (4) Operating Room: \$320.00 (basic rate up to one hour)
.. \$60.00 per 15 minutes following first hour.
- (5) Birthing Room: \$375.00/day
- (6) Newborn in nursery: \$90.00/day
- (7) Newborn rooming-in: \$50.00/day (in addition to basic daily room rate for mother)
- (8) Intensive/Coronary Care Unit: \$600.00/day
- (8a) Regular Ward: \$330/day

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(9) Established Patient:

Level 1	\$17.00
Level 2	22.00
Level 3	30.00
Level 4	50.00
Level 5	100.00
Routine physical exam (<1 yr.)	35.00
Routine physical exam (1-4)	35.00
Routine physical exam (5-11)	35.00
Routine physical exam (12-17)	50.00
Routine physical exam (18-39)	65.00
Routine physical exam (>40)	75.00

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- (10) New Patient -For Sick Call & Appointments. Note: Add walk-in, after hours, night or emergency room fees as applicable.

Postop follow-up (included in uncomplicated global service follow-up days per Section 2.8 of the Medical Fees Schedule (available at the Hospital cashier desk) - No Charge.

Level 1 (Nurse visit)	\$25.00
Level 2	40.00
Level 3	60.00
Level 4	90.00
Level 5	125.00

- (11) Outer Island Dispensaries

Charge for supplies and medications as noted in (2)(a)(1) & (2) above.

Add after hours fee when indicated:

Minimal visit	6.00
Brief visit	11.00
Limited visit	16.00
Intermediate visit	22.00
Extended visit	35.00
Observation	20./hr

- (b) Dental Services charges:

Missed Appointment Fee	10.00
Initial oral exam (adult)	20.00
(child)	18.00
Periodic oral exam (adult)	15.00
(child)	19.00
Emergency oral exam (adult)	22.00
(child)	19.00
Consultation	20.00
Bitewing - single	9.00
Bitewing - two films	15.00
Bitewing - four films	21.00
Adult prophylaxis	31.00
Child prophylaxis	23.00

- (c) Veterinary Service charges:

Registration	10.00
Tag Replacement	2.00
Ownership	5.00
Health Certificate	10.00
Vaccinations	
Rabies	7.00
Distemper	7.00
Ear Mite Examination	6.00
Intestinal Parasites Examination	8.00

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Heartworm Examination	8.00
Medications	
X-rays	Use standard Medical/Dental rates
Laboratory Tests	and loading factors.
Misc Supplies	
Euthanasia	10.00
Miscellaneous evaluations and assistance	6.00/
	15 minute increment of time
After-Hours Surcharge	15.00
Veterinarian Support Services	
(To be added to veterinarian fees)	
Surgical Cases	24.00
Routine Visits	8.00
Spay	49.00
Neuter	39.00
Declaw	39.00
Dental Cleaning	39.00

(3) Miscellaneous:

(a) Ambulance Transport: \$45.00/call

(b) Recompression Chamber Use: (Does not include Physician's fee)

Acute decompression sickness, air embolism, etc
 First hour \$300.00
 Each subsequent one-half hour 150.00

Hyperbaric oxygen treatment of gangrene,
 ulcers, etc. - First hour \$200.00
 Each subsequent one-half hour 100.00

~~----- (c) Medical Surveillance Program: Individuals shall not be charged for examinations, procedures or immunizations which are required by the Kwajalein Hospital Medical Surveillance Program. Charges shall be nonreimbursable for LSC and SLES employees or shall be directed to the employer for non-LSC employees.~~

Civilian employees of the U.S. Army shall not be personally charged for Occupational & Preventive Medicine services required by the employee's department or the USAKA Hospital Occupational Medicine Medical Surveillance Program. Charges shall be directed to Tripler Army Medical Center accompanied by a letter of verification from the USAKA Medical/Dental evaluator.

(d) **Workers' Compensation Injury/Illness:** Individuals shall not be personally charged for medical/dental services when the employer provides written authorization (Department of Labor Form L.S 1 or similar form) to give service compensable under Workers' Compensation programs. With appropriate authorization the employer or employers Workers' Compensation insurance shall be charged for care.

Individuals who provide no authorization (within a maximum of 30 days of service) shall be personally charged for medical/dental services.

(e) **Examinations required by LSC or USAKA Safety Officer:** Individuals shall not be charged for physical examinations, tests, and procedures done at the request of the LSC or USAKA Safety Officer charges shall be nonreimbursable for LSC employees or shall be directed to the employer for non-LSC employees.

(f) **Off-site consultations and tests:** Patients receiving care on a reimbursable basis shall be charged the cost of off-site consultations and tests.

(g) **Visiting Specialists:**
TAMC Consultants. Active duty military personnel and dependents and retired military personnel and dependents shall not be charged for services. All other individuals shall be charged for office consultations.

99241	Level 1 Consultation	\$35.00
99242	Level 2 Consultation	50.00
99243	Level 3 Consultation	75.00
99244	Level 4 Consultation	100.00
99245	Level 5 Consultation	150.00

Additional services shall be charged in accordance with the Table of Fees maintained by the USAKA Medical/Dental facilities.

Civilian Consultants. Unless otherwise specified in civilian consultant subcontracts, individuals shall be billed directly by the consultant for services.

An exception is active duty military and active duty reserve personnel. Unless otherwise specified, the LSC shall be billed by the consultant. The LSC will then send a bill to Tripler Army Medical Center accompanied by a letter of verification from the USAKA Medical/Dental evaluator.

Civilian Optometrist. Active duty military personnel and active duty reserve personnel shall be billed directly by the optometrist and held personally accountable for glasses ordered from the optometrist. Otherwise, optical examinations shall be billed as for other civilian consultants above.

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(4) Optometrist Care:

-Deleted-

X

(5) Orthodontic Care

(a) An orthodontist visits Kwajalein a minimum of nine times each year. Treatment costs are determined on an individual case basis and are payable directly to the orthodontist, except as noted in b(4) below. In addition to the orthodontist's direct charge, there is a \$5.00 charge for supportive services provided by the LSC that is payable by the individual except as noted in b(4) below.

(b) Orthodontic treatment for active duty military personnel and their dependents and payment for such treatment shall be as follows:

(1) Active duty military personnel and their adult or minor dependents who enter USAKA fully banded or undergoing an active phase of orthodontic care may receive treatment by the visiting orthodontist on a nonreimbursable basis. Continuity treatment of military personnel and their dependents shall be provided on a space available basis, as determined by the USAKA Chief Dental Officer, but shall have priority over the initiation of new patient treatment from any source within USAKA.

(2) Elective orthodontic appliances will not be placed and active orthodontic treatment will not be initiated on active duty military personnel by the visiting orthodontist. In extreme situations where maxillofacial trauma, congenital, developmental or acquired facial deformities, or oral disease has effected the health of the soldier, orthodontic treatment may be initiated, as recommended by the USAKA Chief Dental Officer and approved by the Army Dental Clinic, Tripler Army Medical Center.

(3) Orthodontic treatment of military dependents may be initiated on a space available basis using the following Handicapping Index of Malocclusion (HIM) as a guide to determine the severity of malocclusion:

Handicapping Malocclusion	40 or more points
Severe Malocclusion	30-39 points
Moderate Malocclusion	20-29 points
Minimal Malocclusion	19 or less points

No minimal or moderate malocclusion cases will be initiated for military dependents as long as a waiting list of severe or handicapping malocclusion cases exists from any source within USAKA, as determined by the USAKA Chief Dental Officer.

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(4) Charges for LSC orthodontic service pursuant to paragraph (a) above, and orthodontic treatment costs, pursuant to paragraph b(1) through b(3) above, shall be on a nonreimbursable basis to active duty military personnel and their dependents IAW AR 40-3 and current policy of the Army Dental Corps. The orthodontist may be paid by the LSC using base support funds at the end of each subcontract period for orthodontic treatment of military personnel and their dependents. However, such payment shall not result in the minimum earned fee for the period, as set forth in the orthodontist subcontract, being exceeded. Further, such payment shall in no circumstances exceed the cost of round-trip transportation and per-diem to Tripler Army Medical Center for each adult patient and for each minor patient plus one accompanying adult.

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APPENDIX B

FINANCIAL POLICY AND RATE MANUAL

CHAPTER 3

3-1. GENERAL. This chapter defines the policy to comply with DODD 3200.11, Major Range and Test Facility Base (MRTFB) for applying logistic support cost to customer programs. This includes those ancillary variable indirect costs that benefit customer programs. It provides the procedures for allocating these costs to each contractor and to each customer program. It describes how the additional costs for other government agencies and nongovernment customers are derived and applied.

3-2. POLICY. The Policy for Implementation is as follows:

a. When available, standard rates will be used to establish a price for services performed by the LSC. For MRTFB customers, procedures covered under paragraph 3-3 will be followed. For non-MRTFB customers, the logistic contractor will use standard rates when available. When not available, direct labor will be loaded by a rate developed according to instructions in paragraph 3-3.

b. Logistic Contractor's Indirect Cost: The logistic contractor's indirect cost will consist of Fee, G&A, Fringe and Management. The rates for these factors will come from the CDRL AP06 report. The rates will be applied by the logistic contractor to all direct labor dollars charged to logistic contractor's customers.

c. Logistic Contractor's Customer Support Cost: The logistic contractor's customer support cost will consist of Education, Medical, Food Services, Facilities Support, Transportation, Other Community Services and Other Support as applicable. These costs will be taken from the CDRL AP06 report. They will be applied in accordance with paragraph 3-3.

d. All contractors will include actual direct and indirect costs incurred in their Memorandum Billing Reports. This will include an applicable share of CONUS cost. Each contractors cost accounting system will prorate to customer programs indirect cost, including G&A and Fee, across a direct labor base. Each contractor will bill only costs incurred by them. All Contractors will also include USAKA loaded costs on their Memorandum Billing Report showing the load cost as a separate entry.

3-3. PROCEDURES. The Kwajalein Missile Range, USAKA CSSD-RA-B, and all USAKA Contractors, to include MIT/LL, shall comply with these procedures.

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a. Kwajalein Missile Range:

(1) Cost Estimates For the Budget Year: As required, the KMR will obtain requirements data from MRTFB customers. The KMR will provide this data to USAKA logistic support and technical contractors who will respond with estimated labor, material and other costs to support each customer mission. The contractor responses will be forwarded to USAKA (CSSD-KA-BP) to be used to develop contractor percentages.

(2) Revisions During Current Year: Information regarding changes in mission requirements will be provided by the KMR to all contractors. The contractor will review for any updates required and respond with changes in estimates.

b. USAKA, CSSD-KA-BP:

(1) Budget Year Cost Estimates: The CSSD-KA-BP will receive from the KMR the direct labor dollars EAC, and the total cost EAC, by program, by contractor, including the logistic contractor. They will use these dollars to develop percentages and provide the percentages to the logistic support contractor for allocation of support costs.

(2) Current Year Cost Estimates: During the current year there will be the normal monthly cost updates and revised EAC's. There may also be updates based on directed changes, i.e., mission cancellations, etc.

(3) On an annual basis, compute the percentage of customer budget year obligations in each contract to the total budget year obligations by contract. This provides the percent share of the total support cost that should go to the customer programs. The balance will be absorbed by the institutional program. This percentage will be provided to the logistic support contractor for allocation of cost to each contractor's customer program. NOTE: The first allocation of logistic support cost is to each contractor for education based on students in school, food service based on bachelors eating in the mess hall; and medical, facilities support, transportation and other community services based on population. The total support cost allocated to each contractor must then be prorated between customer and institutional.

c. Technical Contractor:

(1) Cost Estimate for Budget Year: Each contractor will include in their estimate for each program and the total contract, the direct labor hours and total costs resulting from their projections. It is requested that the data be provided to the KMR, along with other cost data, e.g., mission cost.

d. Logistic Contractor:

(1) Cost Estimate for Budget Year and Current Year:
The logistic contractor will develop CDRL AP06 in accordance with instructions. Cumulative indirect cost (Fee, G&A, Fringe and management) developed under CDRL AP06 will be applied to the logistic contractor's ~~direct~~ labor cost when developing cost for direct support to customers. Cumulative support cost (allocable, i.e., Education, Medical, Food Service, Facilities Support, Transportation, Other Community Services, Other Support) developed under CDRL AP06 will be allocated to each customer. The indirect cost application will be done at the time the direct effort is costed. The support cost distribution will be accomplished in the following steps:

STEP 1. Compute support cost allocable for the budget fiscal year. This will be done for Education, Medical, Food Services, Facilities Support Division, Transportation, Other Community Services, and Other Support. The cost allocable amounts will be the annual amounts projected for each allocable.

STEP 2. Compute percent of distribution of support cost allocable to use for each contractor. The method of determining the percent is shown below for each allocable area.

SUPPORT COST ALLOCABLE	METHOD
Education Services	Student days by Contractor
Food Services	Bachelors by Contractor
Medical Services	Population by Contractor
Facility Engineering Svc	Population by Contractor
Other Community Svc	Population by Contractor
Transportation	Population by Contractor
Other Spt as applicable	Population by Contractor

Data for student days, bachelors, and population will be collected for all MRTFB contractors and for all tenants and government personnel living on the range. A percent is computed for each of the 3 methods, for each contractor and "all others" by dividing the data for each contractor/all others by the total for the specific method. "ALL OTHERS" equals Government civilians, military, Corp of Engineers and their contractors, other non-MRTFB contractors, and any others living on leased ground that are not previously included. Data should be taken from the LSC monthly status report. Total for students will be all students in school. Total for Messing is the number of bachelors eating in the mess hall that work for the MRTFB contractors. Total for population is the number of people living at USAKA excluding transients and test customers on site.

STEP 3. Compute percent of customer effort to total effort. This is done by dividing the customer funds in the contract by

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PROPERTY A

the total contract value for each applicable fiscal year. This percentage will be computed annually by USAKA (CSSD-KA-BP) and provided to the LSC.

STEP 4. Distribute allocable costs from Step 1 to each contract/all others based on percentage ratios computed in Step 2.

STEP 5. Using the ratios computed in Step 3, compute the dollars that should be allocated to all customers for each contractor. Multiply total dollars for each contractor computed in Step 4 by the factor computed in Step 3. This will provide the total dollars, projected for the fiscal year.

STEP 6. After the allocation in Step 5 is made, the load factor must be developed. The logistic contractor will provide CDRL AP06 to USAKA (CSSD-KA-BP). The USAKA (CSSD-KA-BP) will take each contractor's direct labor dollars and divide those dollars by the allocation amounts calculated in Step 5. The resulting percentages will be the budget year's load factors to be applied to each contractor's direct labor dollars. The load factor for materials will also be taken from the CDRL AP06.

STEP 7. Each contractor will apply the load factors developed in Step 6. All contractors except the LSC contractor will report the loaded portion for labor and materials on their respective Memorandum Billing Reports. The LSC contractor will report their loaded portion for labor and materials on line 2 of the Memorandum Billing Report for each customer program.

STEP 8. The USAKA (CSSD-KA-BP) will combine all of the loaded amounts for each customer program from each contractor into a single amount for each customer and furnish this amount to the LSC contractor for inclusion on their Memorandum Billing Report.

(2) In order for the logistic contractor to bill for the support cost, the funds for the support will have to be obligated in their contract. This will be done at the beginning of each fiscal year based on the budget year estimates that are developed in the previous fiscal year.

(3) Non-MRTFB Customer Logistic Services Rate: Where a standard rate does not exist, a rate will be computed based on the applicable direct labor rate, plus an amount to cover indirect cost, plus an amount to cover the LSC contractor's support cost. This will be taken from CDRL AP06. The indirect rate will be the total percentage for Fee, G&A, Management Pool and Fringes. The support standard rate will be computed by taking the total allocated cost for the LSC contractor (Step 4) and dividing the amount by the Range User labor Base as shown on the CDRL AP06 report.

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**DEPARTMENT OF THE ARMY**

UNITED STATES ARMY KWAJALEIN ATOLL / KWAJALEIN MISSILE RANGE
BOX 26, APO AP 96555-2526

April 24, 1997

Resource Management Office

Mr. Brian Landry
Acting Site Contracts Manager
Range Systems Engineering Co.
Post Office Box 1706
APO AP 96555

Dear Mr. Landry:

Request inclusion of the enclosed updated aircraft rates to the Financial Policy and Rate Manual (FPRM) of Contract DASG60-94-C-0067 for Kwajalein Logistic Support (see enclosure 1).

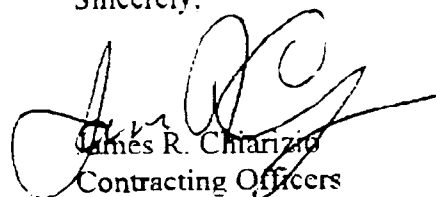
Aviation costs on page 1 of CDRL AP08 should be adjusted to reflect the updated management rate (see enclosure 2).

Also request update of the marine department section of the FPRM. Replacement pages are provided as follows: page B-14 (enclosure 3) and page B-15 (enclosure 4). These changes incorporate new rates, deletes the crane barge, establishes a rate for the LCU 1600 and provides a fee for small boats using the Marine Department piers for maintenance. Note when revision 2 of the FPRM is processed, page 15a should be removed.

Effective date of these new rates shall be June 1, 1997. These changes will be included in an upcoming formal contract modification to the FPRM.

USAKA/KMR points of contact for these actions are Richard Martin, Resource Management, ext. 5-3558 (FAX 1182), MSG Cliff Roderiques for aircraft rates, Transportation Branch, ext. 5-3452 and CW4 Pat Edinger for marine rates, Transportation Branch, ext. 5-3421.

Sincerely,


James R. Chiarizio
Contracting Officers
Representative.

4 Enclosures

FINANCIAL POLICY AND RATE MANUAL

CHAPTER 2 RATES

2-1. GENERAL. This chapter sets forth rates for Logistical Support in effect at U.S. Army Kwajalein Atoll. Any applicable allocated support cost is included in the rate unless specifically indicated otherwise. The Logistics Contractor will request contracting officer approval to revise these rates based on actual cost of services and/or as new services are implemented or USAKA policy requires. Upon approval by the contractor officer, this manual will be updated by deleting the changed page and replacing with like numbered page.

2-2. AVIATION SERVICES.

a. Use of Aircraft

(1) Dedicated Aircraft - per flying hour

Aircraft Type	DOD Rate	All Others Rate
DHC-7	\$ 2,742.00	\$ 3,385.00
UH-1	\$ 1,920.00	\$ 2,782.00

(2) Passengers Services - per flying hour

Aircraft Type	DOD Rate	All Others Rate
DHC-7	\$ 55.00	\$ 68.00
UH-1	\$ 175.00	\$ 253.00

Rate is based upon per flying hour divided by total number of seats available

(3) Passenger Services - space available

Aircraft Type	DOD Rate	All Others Rate
DHC-7	\$0	\$ 10 *
UH-1	\$0	not allowed

* This is an administrative charges for a one-way trip.

b. Support to Transient Aircraft

(1) Landing, Parking, and Storage Fees

(a) These fees are applicable to commercial aircraft only

(b) Landing fees are based upon on the maximum gross take off weight (MGTOW) of the aircraft at a rate of \$1.70 per 1000 lbs, LAW AR 95-2. Changes are applicable to commercial aircraft routinely transiting USAKA/KMR are as follows:

CDL AP08

Aviation
FY 1996

AIRCRAFT COST PER FLYING HOUR

LINE	DESCRIPTION	DHC-7	UH-1H	SCHEDULE
1	LABOR			
2	Flight Operations labor	175.67 \$	299.16	1
3	Maintenance Labor	271.94	322.16	1
4	Air Traffic/Airfield Labor	37.30	50.84	1
5	Safety Labor	11.78	11.78	1
6	Administrative Labor	23.32	28.00	1
7	Quality Assurance Labor	53.64	57.75	1
8	Subtotal \$ 643.00 — 573.65 \$ 862.00 769.70 —			X 112.032
	Management rate			Base Support Load Factor
9	24.50%	140.54	188.58	
10	FAA Weather Bureau Labor	5.47	5.47	7
11	Total Labor \$	719.65 \$	963.75	
12	MATERIALS			
13	Maintenance Materials \$	745.92 \$	478.19	2
14	Lubrication Products	1.98	0.66	9
15	Subtotal \$	747.90 \$	478.85	
16	Material Handling Rate	27.00%	201.93	129.29
17	Total Materials \$	949.83 \$	608.14	
18	TOTAL LABOR AND MATERIALS			
19	(Lines 11 & 17) \$	1,669.48 \$	1,571.89	
20	OTHER COSTS			
21	Fuel \$	162.70 \$	56.95	10
22	Airframes Overhaul	176.23	178.32	11
23	Engines Overhaul	0.00	0.00	12
24	Other Direct Cost	59.07 \$	70.42	3
25	Insurance	82.53	42.27	13
	TOTAL OTHER COST \$	480.53 \$	347.96	
26	LEASE COST \$	591.72	0	14
27	TOTAL COST PER FLYING HOUR	2,741.72 \$	1,919.85	
		3385.00 *	2782.00 *	

* Based upon Base Support Load Factor of 112.032 x Line 8

(Encl 2)

2-3 MARINE SERVICES

a. Marine Vessels

(1) General - All rates include crew. Round trip cost will be billed to the requesting organization. Other organizations may move cargo on these vessels space available at no charge. Only sanctioned organizations may rent the vessels other than DoD and Corporate accounts.

(a) Operational time is actual time underway and will be billed to the next full hour for any portion of an hour.

(b) Standby time is the time from landing to departure with engines shut down. Additionally, each trip will be charged one hour prior to and one hour after any use of a vessel, with the exception of sanctioned private organizations and other official community service programs. This time is used for engine warm up, machinery/safety checks and setup/teardown of required equipment. If extra standby time is required to on-load/off-load space available cargo, such time will be charged to the organization requesting shipment of that cargo.

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8001 30

(c) Laytime is when a vessel is out of home port and manned only by a watch while in a port at another location.

(d) Daily rates are vessels used over a 24 hour period.

(2) Usage Charges - Cost per hour

(a) Base support rates

	Operational rate	Standby rate	Daily Rate	Recreation rate running/standby
Catamaran	454	387	None	370/308
LCM	175	148	None	147/122
1600 LCU	199	175	None	161/140
2000 LCU	352	288	8448	298/253
Tug	552	493	13,258	None
Barges	134	134	3216	None
CSB	306	296	None	None
Worthy *	None (Customer)	None	None	None

(b) All other activities (Range customers, DOE, Navy, PMI)

	Operational rate	Standby rate	Daily Rate
Catamaran	499	425	None
LCM	192	162	None
1600 LCU	219	192	None
2000 LCU	387	316	8448
Tug	607	542	13,258
Barges	147	147	3216
CSB	336	325	None
Worthy *	1016	911	18,762

* No base support use of the Worthy. All costs are to be paid for on a special transportation request (1051) by authorized customers.

(3) Unofficial travel from Kwajalein to Roi is \$350 each way.

(4) Port Services (Kwajalein)

(a) Piloting/Riding advisor is a flat \$700 round trip with delivery of pilot included in cost. Line handling at Kwajalein pier is \$150 upon callout. Stevedoring and drayage is actual labor and materials billed to account plus load per chapter 3.

(c) Use of Marine Department pier space will be per USAKA policy and billed at \$3.00 per foot per day (or any portion thereof over 2 hours).

(6) Base support use of recreational boats will be per small boat charges in effect at time of use..

(Rev 3) B-15

(ENCL 4)

USAKA Rental Rates

(Effective 1 Oct 87)

Transient Housing (Rates are per person, per day)	1st Family		Other Family
	Rate	Member	
DV Room - 1 King bed	\$85	\$10.00	-
DV Trailer	85	25.00	\$5.00
Kwaj Lodge - Single room, private bath	75	10.00	-
TDY Trailer	65	25.00	5.00
Other UPH - Single room, private bath	60	10.00	-
Kwaj Lodge - Single Room, shared bath	50	10.00	-
Other UPH - Single room, shared bath	45	5.00	-
Kwaj Lodge - Double room, shared bath	40	-	-
Other UPH, 3-4 person, shared bath	30	-	-
Other UPH, 5-7 person, shared bath	20	-	-
Macy's, 3d floor, open bay	15	-	-
Vacation Trailer *	20	5.00	6.00
Vacation room - Sgl/dbl room, shared bath*	15	5.00	-

* Kwaj/ROI residents only.

NOTE: Bicycle Rentals \$5 per day.

Unaccompanied Housing

(Minimum 6 months, rates are per person)	Monthly Rate
Pacific BQ	
2 people	200
3 people	175
4 people	150
More	125
Open Bay (704)	—
Ocean BQ (3 per room)	175
Other BQ	
Suite (ROI-Namur)	750
Private Bath - 1 person	600
2 people	300
3 or more	200
Shared Bath - 1 person	400
2 people	225
3 or more	175
Inland	750
2 people (each)	400
3 people (each)	300

Family Housing

(Minimum rental 6 months)

Old Housing - Category "B" (200 series)

1 Bedroom	\$200
2 Bedrooms	1,000
3 Bedrooms	1,200

Old Housing - Category "D" (400 series)

1 Bedroom	\$750
2 Bedrooms	900
3 Bedrooms	1,100

New Housing

2 Bedroom	\$1,100
3 Bedrooms	1,400

Inland

\$750

Office Space @

Annual

Korapslein, ROI-Namur, Meck

Rate

Air Conditioned

\$18.00

Non-Air Conditioned

12.00

Hospital Space @

\$38.00

Storage/Warehouse Space @

Climate Controlled	\$8.00
Non-Climate Controlled	5.00

@ Cost per square foot per year; minimum rental is 6 months.

PO Box 622
APO AP 96555

Raytheon

KLS:CDRL:AE02:468

28 June 1997

Commander
U.S. Army Kwajalein Atoll
ATTN: CSSD-KA-I
P.O. Box 26
APO AP 96555-2526

Subject: Contract No. DASG60-94-C-0067, CDRL Submission-Recommended School
Term Rates for Students

Gentlemen:

In accordance with the provisions of CDRL AE02, the attached school term rate recommendations are submitted for your approval. A summary of the recommended rates follow:

Elementary School	\$6,993
Kindergarten	\$3,497
Jr/Sr High School	\$9,845

The rates charged for Marshallese students have not been changed, they are still projected at \$75 per month for 9 months for all students except kindergarten, which is \$35 per month.

The rates charged for KAPS and SALK have not been adjusted. We will continue to charge the rates directed in the November 16, 1995 memo from James Chiarizio.

The rates charged for Adult Education Classes vary depending on the class.

If you have any questions, or require additional information, please contact me at extension 1001.

Sincerely,

Range Systems Engineering Company


James F. McMahon
Site Contracts Manager

SECTION 00800

APPENDIX C

Agreement Regarding the
Military Use and Operating Rights
of the Government of the United States in
the Marshall Islands
Concluded Pursuant to Sections 321 and 323 of the
Compact of Free Association

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Annex A.....Defense Sites Provided by the
Government of the Marshall
Islands Pursuant to Article III,
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Agreed Minute

Agreement Regarding the
Military Use and Operating Rights
of the Government of the United States in
the Marshall Islands
Concluded Pursuant to Sections 321 and 323 of the
Compact of Free Association

This Agreement sets forth the military use and operating rights of the Government of the United States in the Marshall Islands, and is concluded pursuant to Sections 321 and 323, Title Three of the Compact of Free Association (the Compact).

1-1

Article I

Definitions

The Definition of Terms set forth in Article VI of Title Four of the Compact and the Definitions set forth in paragraph 2 of Article I of the Status of Forces Agreement Concluded Pursuant to Section 323 of the Compact (the Status of Forces Agreement) are incorporated in this Agreement.

2-1

Article II

Applicability of Status of Forces Agreement

The provisions of the Status of Forces Agreement shall apply.

3-1

Article III

Provision of Defense Sites

The Government of the Marshall Islands shall provide to the Government of the United States the defense sites identified in Annex A to this Agreement. Specific arrangements for the establishment and use by the Government of the United States of defense sites in addition to those set forth in Annex A shall be in accordance with Section 321 of the Compact.

Article IV

General Military Use and Operating Rights

1. Consistent with Section 352 of the Compact, the Government of the United States has free access to and unrestricted control of the defense sites, including the right to control entry to and exit from any or all defense sites and the right to take necessary measures for their establishment, use and operation. The Government of the United States may take, within the defense sites and within the seabeds, water areas and air space adjacent to or in the vicinity of the defense sites, such measures as are necessary for the use, security and defense of the defense sites. These measures include the right:

(a) To maintain the defense sites and to construct structures and improvements thereon;

(b) To improve and deepen the harbors, channels, entrances, and anchorages, to dredge and fill and generally to fit the premises to their intended use;

(c) To control anchorages and moorings adjacent to or within the vicinity of the defense sites, and movements of ships and waterborne craft, to, from and within the defense sites;

(d) Subject to the provisions of paragraph 2 of Article V of this Agreement, to control aircraft operations to, from and within the defense sites and to control aircraft movement in the air space adjacent to or in the vicinity of the defense sites;

(e) To regulate and control all official communications of the Government of the United States and its contractors to, from and within the defense sites subject to the separate agreement between the Government of the United States and the Government of the Marshall Islands on communications referred to in Article III of Title One of the Compact;

(f) To prevent interference from any source whatsoever with all official communications of the Government of the United States and its contractors;

(g) To install, maintain, use and operate defense-related oceanographic, aeronautical, space communications, and other military or scientific systems and equipment; and

(h) To advise and assist, by means of visual and radio vectoring, safe passage of ships and aircraft through areas made hazardous by periodic missile and other test operations after, or concurrent with, notification to the Government of the Marshall Islands.

2. In conducting its activities in the defense sites, the Government of the United States shall use its best efforts to:

(a) Avoid interference with commercial activities including the exploitation of living and non-living resources of the sea;

(b) Avoid interference with navigation, aviation, communication and land or water travel in the Marshall Islands;

(c) Minimize damage to the terrain and to reef areas;

(d) Avoid harm to the environment, including water areas;

(e) Avoid activities which would adversely affect the well-being of the residents of the Marshall Islands; and

(f) Notify the Government of the Marshall Islands of non-routine activities so that the Government of the Marshall Islands may take steps to assist the Government of the United States in executing its responsibilities to minimize any adverse impact of such activities.

3. In order not to interfere with operation of the defense sites or pose safety hazards to individuals in the area, the Mid-Atoll Corridor area defined in Annex A, except for the islands of Meck, Eniwetak, Omelek, Gellinam, Gagan, Illeginni and Legan, is a closed area except when the Government of the United States announces that the Mid-Atoll Corridor area is temporarily open.

4. The Government of the United States may invite members of the armed forces of other countries to use defense sites pursuant to this Agreement, in conjunction with and under the control of the United States Armed Forces. Use by units of the armed forces of other countries of such defense sites, other than for transit and overflight purposes, shall be subject to consultation with and, in the case of major units, approval by the Government of the Marshall Islands.

5. The provisions of Section 173 of the Compact are incorporated by reference into, and become a part of, this Agreement. The Signatory Governments may, from time to time, consult regarding the implementation of this paragraph.

Article V

Shipping and Aviation

1. The Government of the United States may place or establish in the defense sites and the water areas adjacent thereto or in the vicinity thereof, lights and other fixed and floating aids to navigation of vessels and aircraft necessary for operations pursuant to this Agreement. The Government of the United States shall consult with the Government of the Marshall Islands on the position or characteristics of and any alterations to such aids to navigation.

2. Aircraft owned or operated by the Government of the Marshall Islands shall have access to and use of the airfield and related facilities located on the Kwajalein Island defense site, subject to United States military requirements. The Government of the United States shall give sympathetic consideration to requests by the Government of the Marshall Islands for access to and use of this airfield and related facilities by other aircraft. This access and use shall be subject to agreement between the Government of the United States and the Government of the Marshall Islands. Aircraft may also land at other defense sites with the prior consent of the Government of the United States.

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Article VI

Law Enforcement

Regularly constituted military units of the Armed Forces of the United States and civilian security guards of the Armed Forces of the United States or security personnel under contract to the Government of the United States shall have the right to police the defense sites, and may take all appropriate measures to ensure the maintenance of law and order in the defense sites. United States military police or civilian security guards shall not be used outside the defense sites for law enforcement purposes, except as may be agreed with the Government of the Marshall Islands.

Article VII

Community Relations Council

The Government of the Marshall Islands and the Government of the United States shall each designate representatives to a Community Relations Council, the purpose of which will be to identify and consider all matters affecting relations between the defense sites and local Marshallese communities and to recommend actions as appropriate.

Article VIII

Employment of Labor

1. In the employment of local hire personnel the Armed Forces of the United States and United States contractors shall comply with laws of general applicability in the Marshall Islands regarding minimum wages, provided that such minimum wages do not exceed the minimum wage prevailing in the United States.
2. In the employment of local hire personnel, the Armed Forces of the United States and United States contractors shall provide equal pay for equal work.
3. The wages of local hire personnel who are in the employment of the Armed Forces of the United States or United States contractors as of the effective date of this Agreement shall not be reduced by reason of the cessation of the applicability of United States law in the Marshall Islands as of the effective date of the Compact.
4. The Government of the United States and the Government of the Marshall Islands shall consult with regard to the creation of training projects designed to provide for greater utilization of local hire personnel and to improve their job skills.

Article IX

Miscellaneous

1. All minerals, including oil, antiquities and treasure trove in a defense site and all rights relating thereto are reserved to the Government of the Marshall Islands, but any exploitation thereof shall require the prior concurrence of the Government of the United States.

2. Section 351 of the Compact as between the Government of the United States and the Government of the Marshall Islands is incorporated by reference into, and becomes a part of this Agreement. Unless otherwise provided, all issues or disputes that may arise under this Agreement which cannot be resolved locally shall be referred to the Joint Committee established by Section 351 and resolved in accordance with that Section.

3. The Government of the United States, pursuant to Section 234 of the Compact, transfers title to the Prinz Eugen, the former German warship now located in the Kwajalein Atoll area, to the Government of the Marshall Islands. It is understood that unexpended ordnance and oil remains within the hull of the Prinz Eugen, and that salvage or any other use of the ship could be hazardous. The Government of the Marshall Islands shall hold the Government of the United States harmless for any loss, damage or liability associated with the Prinz Eugen, including any loss, damage or liability that may result from any salvage operation or any other activity that the Government of the Marshall Islands takes or causes to be taken concerning the Prinz Eugen. Any such operation or activity undertaken by or on behalf of the Government of the Marshall Islands shall be conducted at a time and in a manner to be agreed to between the Government of the United States and the Government of the Marshall Islands so as not to interfere with the operation of the defense sites.

4. Consistent with the laws and regulations of the United States, and to the extent that emergency medical services can be made available, the Government of the United States at its Kwajalein Island defense site contractor-operated medical facility shall undertake to provide such emergency services to citizens and nationals of the Marshall Islands on a reimbursable basis under terms and conditions agreed upon between the Signatory Governments.

Article x

Economic Assistance, Effective Date, Amendment and Duration

1. This Agreement shall come into effect simultaneously with the Compact.
2. This Agreement may be amended or terminated at any time by mutual consent.
3. This Agreement shall remain in effect for an initial term of fifteen years. The Government of the United States shall have the right to extend this Agreement for fifteen additional years beyond the initial term.
 - a. For this extension, the Government of the United States shall provide to the Government of the Marshall Islands, on a grant basis, the sum of \$2.5 million after the fifteenth anniversary and prior to the sixteenth anniversary of the effective date of this Agreement. This payment shall be made whether or not the Government of the United States elects to exercise this option and is an obligation which is not subject to termination.
 - b. Not later than the thirteenth anniversary of the effective date of this Agreement, the Government of the United States shall elect whether to exercise this extension. Such election shall be made in writing to the Government of the Marshall Islands.
4. If the Government of the United States elects to exercise the extension set forth in paragraph 3 of this Article, the Government of the United States shall provide to the Government of the Marshall Islands an annual grant payment, commencing on the fifteenth anniversary of the effective date of this Agreement and continuing for each subsequent year that this Agreement remains in effect. This annual payment is to be made as follows:
 - a. In reaffirmation of its continuing interest in promoting the long-term economic advancement and self-sufficiency of all the people of the Marshall Islands, the amount of \$7.1 million adjusted in accordance with the formula specified in Section 217 of the Compact.
 - b. A fixed amount of \$1.9 million.
 - c. If the additional two-year period of negotiation contemplated pursuant to Section 231 of the Compact is in effect between the fifteenth and seventeenth anniversaries of the effective date of this Agreement, the annual payments specified in paragraphs 4(a) and 4(b) shall not be paid, in order that the payments otherwise made in accordance with Section 231 of the Compact shall not be duplicated.
5. The Government of the United States may terminate this Agreement upon the date of expiration of the initial term of this Agreement.

6. In addition to the provisions of paragraph 5 of this Article, the Government of the United States may terminate this Agreement at any other time during the extension period by giving written notice, not later than two years prior to the date it intends to terminate, of its intention to terminate. Upon termination pursuant to this paragraph, the Government of the United States shall make a termination payment to the Government of the Marshall Islands which shall be computed by multiplying, by a factor of two, the payment due the Government of the Marshall Islands pursuant to paragraph 4(a) and 4(b) of this Article the year that termination is to take effect. Such termination payment shall be in addition to the annual payment made during the year of termination. If this Agreement is terminated pursuant to paragraph 5 of this Article, no termination payment shall be made.

7. The assistance the Government of the United States provides the Government of the Marshall Islands pursuant to this Agreement is to ameliorate any adverse impact on economic and social conditions throughout the Marshall Islands of the activities of the Government of the United States in the area of the defense sites. The Government of the Marshall Islands shall initiate projects utilizing the funds provided under paragraph 4(b) of this Article to this end.

a. The Government of the Marshall Islands shall consult with the Government of the United States on the status of these projects.

b. After consultation, the Government of the United States shall provide such technical and planning assistance to the Government of the Marshall Islands in its implementation of such projects as is mutually agreed.

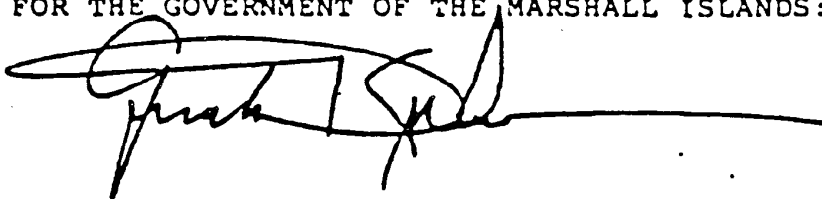
8. Pursuant to Sections 224 and 226 of the Compact the Government of the United States shall, during the initial term of this Agreement, work closely with the Government of the Marshall Islands in developing plans and programs to reduce any adverse social and economic impact of United States defense activities in the Marshall Islands, and will seek to provide, within existing resources, technical assistance required for the implementation of these plans and programs. In addition, the United States is prepared to seek, on a matching basis to be determined by mutual agreement, priority funding to ameliorate any adverse impact caused by changes in defense programs.

9. The Government of the United States and the Government of the Marshall Islands may from time to time enter into contractual arrangements pursuant to Section 323 of the Compact. Such arrangements may include reimbursable services provided by the Government of the United States to the Government of the Marshall Islands. The Armed Forces of the United States may furnish such services provided that payment for reimbursable services is made in accordance with the terms of such contractual arrangements.


IN WITNESS WHEREOF, the undersigned, duly authorized for the purposes, have signed the present agreement.

DONE at WASHINGTON, D.C., in duplicate, this 24th day of MAY, one thousand nine hundred eighty-two.

FOR THE GOVERNMENT OF THE MARSHALL ISLANDS:



FOR THE GOVERNMENT OF THE UNITED STATES:



Annex A

Defense Sites Provided by the Government
of the Marshall Islands Pursuant to Article III

1. The Government of the Marshall Islands shall provide to the United States the following land areas. The Government of the United States may, upon request of the Government of the Marshall Islands, grant limited access to these areas.

(a) Outside Mid-Atoll Corridor

<u>Island</u>	<u>Approximate Acreage</u>
Kwajalein	748 (Includes 205 acres land-fill constructed by U.S. Government)
Roi-Namur	398 (Includes 40 acres land-fill constructed by U.S. Government)
Ennugarret	6 (of 24 total acres)
Ennylabegan	71 (of 124 total acres)

(b) Within the Mid-Atoll Corridor

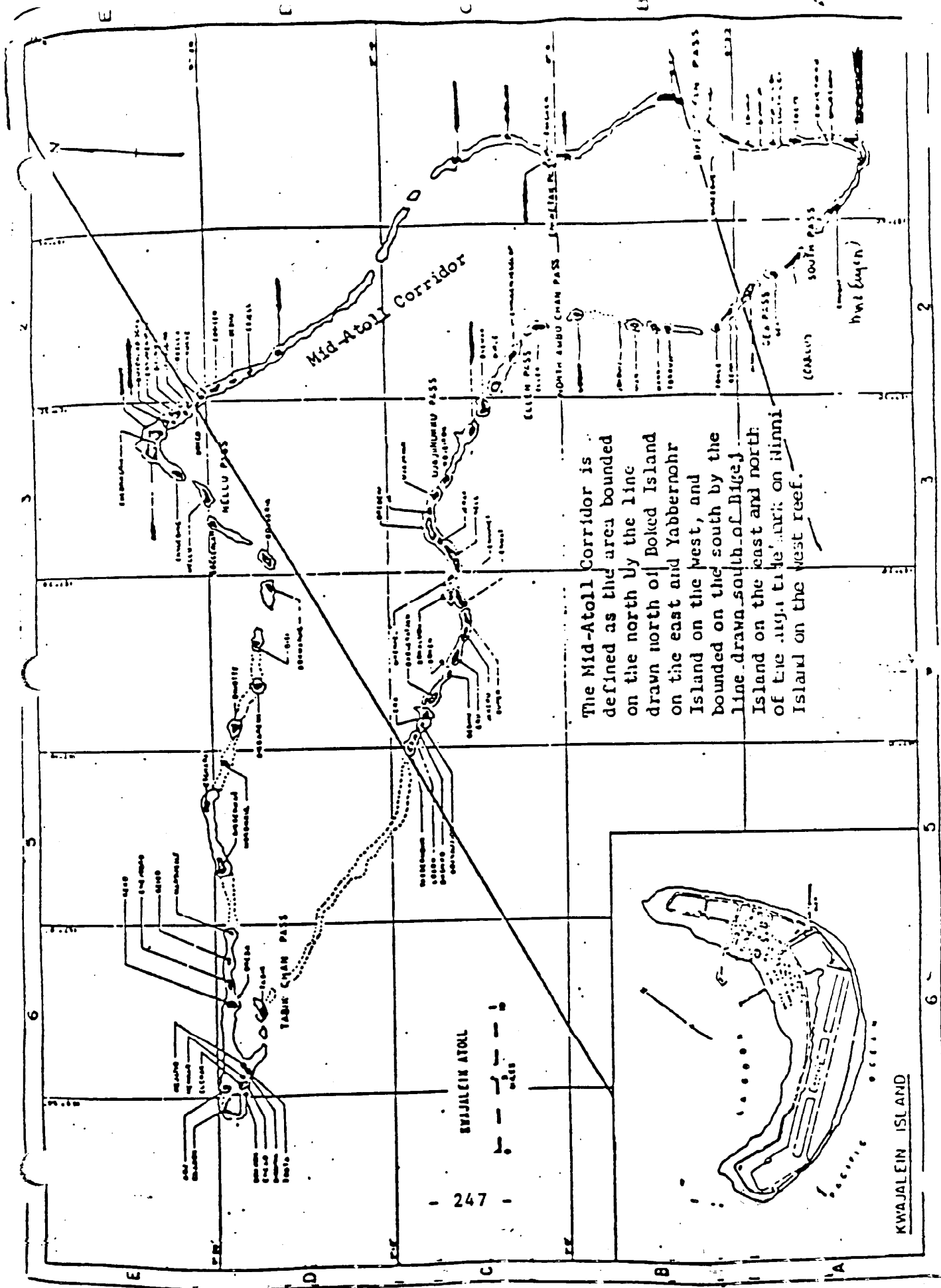
Meck	55 (Includes 18 acres land-fill constructed by U.S. Government)
Eniwetak	15
Omelek	8
Gellinam	5
Gagan	6
Illeginni	31
Legan	18

2. The Government of the United States shall have control of entry and movement of personnel within the Mid-Atoll Corridor Area of the Kwajalein Atoll.

(a) The Mid-Atoll Corridor is defined as the area within the Kwajalein Atoll bounded on the north by a line drawn north of Boxed Island on the east reef and Yabbernohr Island on the west reef and bounded on the south by the line drawn south of Bigej Island on the east reef and north of the high tide mark on Ninni Island on the west reef. A map of the area is attached as Annex B.

A-2

(b) The boundary lines, as stated above and as set out in the map attached as Annex B, shall be redrawn when the Government of the United States determines that the area needed for the safe operation of the defense sites can be reduced from that currently utilized. If the boundary lines are redrawn, the islands then outside the Mid-Atoll Corridor area, except those islands listed in paragraph 1 of this Annex, shall be relinquished.



The Mid-Atoll Corridor is defined as the area bounded on the north by the line drawn north of Bokel Island on the east and Yabbernohr Island on the west, and bounded on the south by the line drawn south of Bigej Island on the east and north of the Bigej Island on the west reef.

KWAJALEIN ATOLL

KWAJALEIN ISLAND

Agreement Regarding the
Military Use and Operating Rights
of the Government of the United States in
the Marshall Islands
Concluded Pursuant to Sections 321 and 323 of the
Compact of Free Association

AGREED MINUTES

Article IX, Miscellaneous paragraph 1: It is the understanding of the Government of the United States and the Government of the Marshall Islands that paragraph 1 of Article IX of this Agreement shall be implemented in a manner consistent with the Constitution of the Marshall Islands and shall not be interpreted as impairing, limiting or altering any rights or interests in mineral rights, or the benefits derived from exploitation thereof, as established by or arising under the Marshall Islands Constitution.

Article X, Economic Assistance, Effective Date and Duration, paragraph 9: It is the understanding of the Signatory Governments that contractual arrangements for provision of reimbursable services pursuant to paragraph 9 of Article X of this Agreement may include, in addition to services, provision of such supplies and equipment, on a reimbursable basis, as may be mutually agreed. The Government of the United States and the Government of the Marshall Islands shall consult prior to the effective date of the Agreement with regard to the continuation of services being provided by the Department of Defense to the Government of the Marshall Islands or the inhabitants of Kwajalein Atoll, including provision of office space and accommodations for persons on official business of the Government of the Marshall Islands.

Article IV, General Military Use and Operating Rights, paragraph 1: Except for Meck, Illeginni, Gagan and Leqan, the islands of the Mid-Atoll Corridor shall be open to visitation during three six-week periods each calendar year. Notice of these periods shall be given to the Government of the Republic of the Marshall Islands in a timely manner. The Commander, Kwajalein Missile Range shall designate these periods, and shall establish the basis for visitation to Omelek, Gellinam and Eniwetak Islands. This basis shall include temporary habitation by up to 19 persons on Omelek, who can fish from Gellinam and Eniwetak. Consistent with United States activities, on Eniwetak, the Commander, Kwajalein Missile Range shall allow temporary habitation on that islands as well. The Signatory Governments may, from time-to-time, consult regarding such modifications to visitation arrangements as may be mutually agreed.

SECTION 00800
APPENDIX D

STATUS OF FORCES AGREEMENT-
Concluded Pursuant to Section 323. of
The Compact of Free Association

1

Agreement in Implementation
of Section 323 of
The Compact of Free Association

Status of Forces Agreement

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STATUS OF FORCES AGREEMENT
Concluded Pursuant to Section 323 of
The Compact of Free Association

This Agreement is concluded by the Signatory Governments and sets forth the legal status of the Armed Forces of the United States, their members, and associated civilians, while present in Palau, the Marshall Islands or the Federated States of Micronesia pursuant to Section 323 of the Compact of Free Association (the Compact).

Article I
Definitions

Article I

Definitions

1. The Definition of Terms set forth in Article VI of Title Four of the Compact is incorporated into this Agreement.

2. For the purposes of this Agreement only, the following terms shall have the following meanings:

(a) "Armed Forces of the United States" means the land, sea and air armed forces of the United States of America, including the Coast Guard.

(b) "United States Contractors" means the legal entities, including corporations and natural persons, present in Palau, the Marshall Islands or the Federated States of Micronesia for the purpose of executing their contracts with the Government of the United States, or subcontracts of such contracts, in support of the Armed Forces of the United States and designated as such by the Government of the United States. The term "United States Contractors" does not include local contractors.

(c) "Local Contractors" means the legal entities, including corporations and natural persons organized under the laws of, and who are in, Palau, the Marshall Islands or the Federated States of Micronesia, respectively.

(d) "United States Personnel" means anyone who is included in in any of the following categories:

(1) "members of the force" -- all military personnel, notwithstanding their citizenship or nationality, on duty with the Armed Forces of the United States who are in Palau, the Marshall Islands or the Federated States of Micronesia;

(2) "members of the civilian component" -- all civilian persons, notwithstanding their citizenship or nationality, except local hire personnel, who are in Palau, the Marshall Islands or the Federated States of Micronesia, and who are in the employ of, serving with, or accompanying the Armed Forces of the United States;

(3) "contractor personnel" -- natural persons, who are United States citizens or nationals or United States permanent resident aliens, except local hire personnel, who are in Palau, the Marshall Islands or the Federated States of Micronesia, and who are United States contractors or officers or employees of United States contractors; or

(4) "dependents" -- the spouses and children of persons included in paragraphs 2(d)(1), 2(d)(2) and 2(d)(3) of this Article and, while members of the household of such persons, other relatives or wards of such persons or their spouses.

(e) "Third Country Contractor Personnel" means natural persons other than United States personnel or local hire personnel who are in Palau, the Marshall Islands or the Federated States of Micronesia and who are United States contractors or officers or employees of United States contractors or dependents of any of them.

(f) "Local Hire Personnel" means citizens and nationals of Palau, the Marshall Islands or the Federated States of Micronesia, who are employed in Palau, the Marshall Islands or the Federated States of Micronesia, respectively, by the Armed Forces of the United States or United States contractors.

(g) "Defense Sites" Means "Military Areas and Facilities" as defined in Section 461 (i) of the Compact.

(h) "Judge" means any judicial officer of a Signatory Government who has the authority to issue a warrant of arrest or its equivalent and for purposes of this Agreement, except for paragraph 6(c) of Article XII, shall also include judicial officers certified as such by the Government concerned.

Article II

Movement

Article II

Movement

1. Consistent with the Compact, this Agreement and any other agreements concluded between the Government of the United States and the Government of Palau, the Marshall Islands or the Federated States of Micronesia in accordance with Sections 321 and 323 of the Compact:

(a) All aircraft, vessels and vehicles operated by, for, or under the control of the Armed Forces of the United States or United States contractors shall enjoy freedom of movement in Palau, the Marshall Islands and the Federated States of Micronesia;

(b) Such aircraft, vessels and vehicles shall be operated in a manner which minimizes danger to persons and property and interference with trade, commerce, exploration and exploitation of living and non-living resources of the sea; and

(c) Movement of such aircraft, vessels and vehicles in Palau, the Marshall Islands and the Federated States of Micronesia, including access to and use by them of defense sites, ports, harbors and airfields, shall not be subject to any taxes, fees or other charges, except those fees or other charges set forth in paragraph 2 of this Article.

2. The Armed Forces of the United States and United States contractors shall pay, at generally prevailing rates unless otherwise agreed, for specific services rendered at their request, including materials received at their request in connection with the use of ports, harbors and airfields in Palau, the Marshall Islands and the Federated States of Micronesia. Such services and materials may include fuel, towing, mechanical servicing and utilities.

Article III
Entry and Departure

Article III

Entry and Departure

1. The Government of the United States may bring into Palau, the Marshall Islands and the Federated States of Micronesia:

(a) United States personnel and United States contractors; and

(b) Third country contractor personnel in a manner consistent with those laws of Palau, the Marshall Islands or the Federated States of Micronesia, respectively, relating to the exclusion of individual, undesirable aliens and taking into account paragraph 5 of this Article and Article IV of this Agreement.

2. United States' personnel shall be exempt from the passport and visa laws and regulations of Palau, the Marshall Islands and the Federated States of Micronesia. Taking into account paragraph 1(b) of this Article and Article IV of this Agreement applications of third country contractor personnel for visas shall be granted or denied expeditiously. All such personnel shall comply with medical immunization requirements of Palau, the Marshall Islands and the Federated States of Micronesia, respectively.

(a) No United States personnel or third country contractor personnel shall acquire any right to permanent residence or domicile solely as a result of their being United States personnel or third country contractor personnel.

(b) United States personnel shall be exempt from laws and regulations of Palau, the Marshall Islands and the Federated States of Micronesia on the entry, departure, registration and control of aliens and foreign agents.

3. Upon entry into or departure from Palau, the Marshall Islands or the Federated States of Micronesia, United States personnel shall have in their possession official orders or documents certifying the status of the individual or group. Such orders or documents shall be shown on request to the appropriate authorities of the Government concerned.

4. For the purpose of their identification while in Palau, the Marshall Islands or the Federated States of Micronesia, United States personnel ten years of age or older shall have in their possession a personal identification card authorized by the Government of the United States which shall show the name, date of birth, status, and photograph of the bearer. Such card shall be shown on request to the appropriate authorities of the Government concerned.

5. Should the Government of Palau, the Marshall Islands or the Federated States of Micronesia request the removal from Palau, the Marshall Islands or the Federated States of Micronesia, respectively, of any United States personnel or any third country

contractor personnel, the request shall be referred to the Joint Committee established pursuant to Section 351 of the Compact for resolution in accordance with that Section, unless the Government of the United States receives the person concerned within its own territory or otherwise effects the departure of such person outside the territory of the requesting Government. Section 351 of the Compact is incorporated by reference into, and becomes a part of, this Agreement. If the Joint Committee so determines, the person concerned shall immediately become subject to the jurisdiction of the Government of Palau, the Marshall Islands or the Federated States of Micronesia in accordance with its laws.

6. Transportation costs attendant to the departure and removal of third country contractor personnel shall be the responsibility of the Government of the United States.

Article IV

Utilization of Contractors and Employment of Labor

Article IV

Utilization of Contractors and Employment of Labor

1. In the establishment, maintenance, and use and operation of defense sites and in the execution of obligations undertaken by the Government of the United States in the Compact and its related Agreements, the Armed Forces of the United States, United States contractors and local contractors:

(a) may employ persons possessing requisite skills and qualifications. Employment preference shall be given, without discrimination, to citizens, nationals and permanent resident aliens of Palau, the Marshall Islands or the Federated States of Micronesia, in their respective jurisdictions, and of the United States. In the employment of such persons pursuant to the preferences set forth in this paragraph, the Armed Forces of the United States and United States contractors shall exercise their best efforts to employ persons present in Palau, the Marshall Islands or the Federated States of Micronesia, respectively; and

(b) shall utilize without discrimination, consistent with the laws and regulations of the United States, qualified local contractors and contractors which are legal entities of the United States. The Armed Forces of the United States and United States contractors shall ensure that the specifications and instructions for contract bids shall permit such free and full competition as is consistent with the procurement of the goods and services needed by the Government of the United States.

2. Prior to the employment of third country personnel or the utilization of third country contractors, the Government of the United States shall notify the Government concerned and shall consult, if requested, with that Government as to the availability of qualified local hire personnel or qualified local contractors.

3. The laws and regulations of Palau, the Marshall Islands or the Federated States of Micronesia shall not apply to the terms and conditions of employment of United States personnel or third country contractor personnel by the Armed Forces of the United States or United States contractors. The Government of Palau, the Marshall Islands or the Federated States of Micronesia shall not require United States personnel, third country contractor personnel or United States contractors to obtain any license, permit or certificate, or to undergo any examination, in connection with the performance of their duties on behalf of the Armed Forces of the United States.

4. In the employment of local hire personnel by the Armed Forces of the United States and United States contractors, the Government of the United States shall adopt measures consistent with the

standards of local labor laws to the extent they are compatible with the laws, regulations and operational requirements of the United States.

Article V

Taxes and Customs

Article V

Taxes and Customs

1. The following are exempt from any tax, fee or similar charge imposed by the Government of Palau, the Marshall Islands or the Federated States of Micronesia:

(a) The services, activities, facilities, equipment, material, income or any other property or transactions of the Armed Forces of the United States or United States contractors;

(b) The ownership, possession, use, or transfer inter se by United States personnel, by death or otherwise, of real or personal property, tangible or intangible, wherever located; and

(c) Income received by United States personnel for services with or employment by the Armed Forces of the United States or United States contractors, or from sources outside the territory of the Government concerned, except that United States contractor personnel and dependents who are also United States contractor personnel are not exempt from a personal income tax generally applicable within Palau, the Marshall Islands or the Federated States of Micronesia up to a level of five percent of their annual income derived from their employment in Palau, the Marshall Islands or the Federated States of Micronesia, respectively, by United States contractors.

2. Third country contractor personnel shall be subject to income tax generally applicable in Palau, the Marshall Islands and the Federated States of Micronesia, respectively.

3. All materials, equipment and other property imported or exported by or on behalf of the Armed Forces of the United States, or United States contractors for the use or benefit of the Armed Forces of the United States, United States contractors, United States personnel, or third country contractor personnel shall be permitted entry into and exit from Palau, the Marshall Islands or the Federated States of Micronesia free from customs duties, license requirements, and other import and export taxes, fees or charges.

4. United States personnel may import into and export from Palau, the Marshall Islands or the Federated States of Micronesia furniture, household goods and personal effects for their personal or family use, including all forms of privately owned land, sea and air transportation, free from customs duties, license requirements, and other import and export taxes, fees or charges.

5. The following are exempt from customs examination by the Government of Palau, the Marshall Islands or the Federated States of Micronesia:

(a) Members of the force, members of the civilian component and the dependents of both when entering or leaving Palau, the Marshall Islands or the Federated States of Micronesia under official orders except when under leave orders;

(b) Documents under official seal, and mail in the United States military postal channels; and

(c) Cargo consigned to or shipped by the Armed Forces of the United States or United States contractors.

6. The Armed Forces of the United States, in cooperation with the Government concerned, shall take appropriate measures, including inspection, to prevent the importation of contraband and to prevent abuse of privileges granted under this Article.

7. Should property imported into Palau, the Marshall Islands or the Federated States of Micronesia under the exemptions provided by this Article subsequently be transferred to a person not entitled to such exemptions, such person shall be liable for import duties and other charges according to the laws and regulations of the Government concerned.

8. Animals and plants, including fruits and vegetables, imported by United States personnel, subject to the provisions of this Article, and by third country contractor personnel shall be subject to the laws and regulations of Palau, the Marshall Islands or the Federated States of Micronesia, respectively, governing such inspection of and restriction on such importations.

Article VI

Service Facilities

Article VI

Service Facilities

The Armed Forces of the United States may authorize the establishment, use, operation and maintenance within defense sites in Palau, the Marshall Islands or the Federated States of Micronesia of service, educational and recreational facilities. Such facilities and their related activities, including the importation, purchase, sale or dispensing of merchandise and services by them shall be exempt from all taxes, customs duties, fees, charges and license requirements of the Government of Palau, the Marshall Islands or the Federated States of Micronesia.

Article VII
Military Post Offices

Article VII

Military Post Offices

The Armed Forces of the United States may establish, operate and maintain military post offices within defense sites for their use and the use of United States contractors and United States personnel. A mail facility operated by a United States contractor on behalf of the Armed Forces of the United States shall be considered a military post office within the meaning of this Article.

Article VIII
Bearing of Arms

Article VIII

Bearing of Arms

1. Members of the force may possess and use arms when necessary to perform their official duties and, in specially designated areas in defense sites, to maintain skills to perform their official duties, in accordance with the laws and regulations governing the Armed Forces of the United States.
2. Contractor personnel may possess or use arms when acting in support of the military mission of the Government of the United States in an official capacity as law enforcement personnel or security officers designated as such by the Government of the United States in accordance with its laws and regulations.
3. Any other possession or use of arms shall be only as agreed between the Government of the United States and the Government of Palau, the Marshall Islands or the Federated States of Micronesia.

Article IX

Operation and Licensing of Vehicles

Article IX

Operation and Licensing of Vehicles

1. The Government of Palau, the Marshall Islands or the Federated States of Micronesia shall accept as valid, without a test or fee, the operator's permit or license or military driving permit issued to United States personnel or third country contractor personnel by the Government of the United States, the Governments of the States of the United States of America, its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands.

2. Official vehicles of the Armed Forces of the United States, vehicles owned or operated by United States contractors, and privately owned vehicles of United States personnel shall be identified by individual markings or license plates issued by the Government of the United States, the Governments of the States of the United States of America, its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands. However, the Government of the United States may use local individual markings or license plates in Palau and the Federated States of Micronesia.

(a) Official vehicles shall not be subject to the registration or safety inspection laws of the Government of Palau, the Marshall Islands or the Federated States of Micronesia.

(b) The Armed Forces of the United States may register vehicles of United States contractors and United States personnel which are not official vehicles, and may inspect such vehicles applying safety standards of general applicability in Palau, the Marshall Islands or the Federated States of Micronesia, respectively. Vehicles so registered and inspected shall be exempt from the registration and safety inspection laws of the Government of Palau, the Marshall Islands or the Federated States of Micronesia, respectively.

3. For purposes of this Article the term "vehicles" includes all forms of land, sea and air transportation.

Article X

Relinquishment of Defense Sites

Article X

Relinquishment of Defense Sites

1. If any installations or improvements which were constructed at the expense of the Government of the United States are to be left behind after relinquishment of a defense site or portion thereof, whether at the termination of any agreement provided for in Section 321 or 323 of the Compact or at any other date, the Government of Palau, the Marshall Islands or the Federated States of Micronesia and the Government of the United States shall consult to determine the residual value, including scrap value, if any, of any such installations or improvements to the Government concerned.
2. The Government of the United States shall take all measures practicable to ensure that every condition substantially or materially hazardous to human life, health and safety resulting from use of defense sites is removed or otherwise made safe. The Governments concerned shall consult as to what constitutes a hazard and how hazards shall be removed or otherwise made safe.
3. The Government of the United States shall have no obligation, upon relinquishment, to restore defense sites to their former condition; however, upon such relinquishment of a defense site or portion thereof, or sooner if mutually agreed, the Government of the United States and the Government of Palau, the Marshall Islands or the Federated States of Micronesia shall enter into negotiations with a view to reaching an equitable arrangement for return of lands that takes due account of United States investment, the prospective use to which such lands will be used and the unique importance of land under local custom and law.

Article XI

Equipment

Article XI

Equipment

The Government of the United States shall retain title to equipment, materials and other moveable property brought into or acquired in Palau, the Marshall Islands or the Federated States of Micronesia and may remove such property at any time. In the event the Government of the United States wishes to dispose of such equipment, materials or other moveable property, the Government of Palau, the Marshall Islands or the Federated States of Micronesia shall have a right of first refusal to purchase such items, at an agreed upon price, after the Government of the United States has fulfilled its statutory and regulatory responsibilities including first offering such equipment to other agencies of the Government of the United States.

Article XII
Criminal Jurisdiction

Article XII

Criminal Jurisdiction

1. Subject to the provisions of this Article:

(a) United States personnel are subject to the criminal jurisdiction of the Government of Palau, the Marshall Islands or the Federated States of Micronesia for offenses committed by such personnel in Palau, the Marshall Islands or the Federated States of Micronesia, respectively.

(b) The Government of the United States has the right to exercise within Palau, the Marshall Islands and the Federated States of Micronesia criminal and disciplinary jurisdiction over United States personnel for offenses punishable under the laws of the United States. In lieu of criminal or disciplinary proceedings in Palau, the Marshall Islands or the Federated States of Micronesia, the Government of the United States may elect to remove United States personnel for such proceedings elsewhere.

(c) For purposes of asserting jurisdiction under this Article, the determination of a Signatory Government as to whether an offense is punishable under its laws shall be conclusive.

2. The Government of Palau, the Marshall Islands or the Federated States of Micronesia has the right to exercise exclusive jurisdiction over United States personnel with respect to offenses committed in Palau, the Marshall Islands or the Federated States of Micronesia, respectively, which are punishable under local law, but not under the laws of the United States applicable to offenses committed outside the territorial jurisdiction of the United States.

3. The Government of the United States has the right to exercise exclusive jurisdiction over United States personnel with respect to offenses committed in Palau, the Marshall Islands or the Federated States of Micronesia which are punishable under the laws of the United States applicable to offenses committed outside the territorial jurisdiction of the United States, but not under local law.

4. The Government of Palau, the Marshall Islands or the Federated States of Micronesia and the Government of the United States have concurrent jurisdiction over United States personnel with respect to offenses committed in Palau, the Marshall Islands or the Federated States of Micronesia, respectively, which are punishable under both local laws and the laws of the United States applicable to offenses committed outside the territorial jurisdiction of the United States. Whenever it is determined by the Government of Palau, the Marshall Islands or the Federated States of Micronesia that an act or omission is a punishable offense under the laws of Palau, the Marshall Islands or the Federated States of Micronesia, respectively, and it is determined by the Government of the United States that the same act or omission is a punishable offense under

the laws of the United States applicable to offenses committed outside the territorial jurisdiction of the United States, the following rules shall apply:

(a) The Government of Palau, the Marshall Islands or the Federated States of Micronesia, respectively, has the primary right to exercise jurisdiction over United States personnel in all other cases of concurrent jurisdiction, except as provided in paragraph 4(b) of this Article.

(b) The Government of the United States has the primary right to exercise jurisdiction over United States personnel in Palau, the Marshall Islands or the Federated States of Micronesia, respectively, for:

- (1) Offenses committed within defense sites, including non-exclusive-use areas during periods of use by the Government of the United States under applicable military use and operating rights agreements concluded under Sections 321 and 323 of the Compact;
- (2) Offenses against the property or security of the United States, or offenses against the person or property of United States personnel;
- (3) Offenses arising out of the performance of official duty;
- (4) Offenses committed by United States personnel who are attached to or embarked in aircraft or vessels transiting Palau, the Marshall Islands or the Federated States of Micronesia and which are operated by, for, or under the control of the Armed Forces of the United States or United States contractors; and
- (5) Any other offense punishable by deprivation of liberty or by a more severe penalty. However, the Government of Palau, the Marshall Islands or the Federated States of Micronesia, respectively, has the primary right of jurisdiction to try any offense that is not a felony under local law and for which the sole penalty which shall be adjudged or imposed, if any, is a fine. Not later than the day following the third anniversary of the effective date of this Agreement, the Government of Palau, the Marshall Islands or the Federated States of Micronesia, respectively, shall have the primary right to exercise jurisdiction over any such offense which is not a felony under local law and is subject to a maximum punishment no greater than deprivation of liberty for less than six months.

(c) The Government of Palau, the Marshall Islands or the Federated States of Micronesia having the primary right to exercise jurisdiction waives that right, unless it notifies the Government of the United States of its intention to exercise such right as soon as practicable, but within 30 calendar days after notification of the offense by either Government.

(d) The Government having the primary right to exercise jurisdiction shall give sympathetic consideration to a request from the other Government concerned for a waiver of such primary right in cases the requesting Government considers to be of particular importance.

(e) The provisions of this Article shall be reviewed by the Signatory Governments concerned at anytime on request by one of them, but not later than during the year following the fifth anniversary of the effective date of this Agreement in order to determine whether any modification of its provisions may be appropriate in light of circumstances then prevailing.

5. Except for laws officially transmitted in English to the Government of the United States by the Government concerned, ignorance of the laws of Palau, the Marshall Islands or the Federated States of Micronesia shall constitute a defense.

6. The Government of the United States and the Government of Palau, the Marshall Islands or the Federated States of Micronesia shall assist each other in the arrest or detention of United States personnel in Palau, the Marshall Islands or the Federated States of Micronesia, respectively.

(a) The Government concerned shall promptly notify the Government of the United States of the arrest or detention of any United States personnel.

(b) Members of the force accused or suspected of the commission of any offense in Palau, the Marshall Islands or the Federated States of Micronesia shall remain in or be transferred to the custody of the Government of the United States unless the Government of the United States declines such custody. The Government of the United States shall make available for purposes of investigation or trial members of the force in its custody over whom the Government of Palau, the Marshall Islands or the Federated States of Micronesia has the right to exercise jurisdiction pursuant to this Agreement. Upon completion of all judicial proceedings, including appellate proceedings, such personnel shall be transferred to the Government of Palau, the Marshall Islands or the Federated States of Micronesia concerned if a sentence providing for deprivation of liberty has been finally adjudged.

(c) The provisions of Title Four of the Agreement on Mutual Assistance in Law Enforcement Matters shall be applicable to United States personnel who are citizens or nationals of the United States.

(d) The Government of the United States may request custody of a prisoner who is a member of the force, deprived of liberty by order of a Court of Palau, the Marshall Islands or the Federated States of Micronesia. The Government concerned shall transfer such prisoner to the custody of the Government of the United States which shall provide for the carrying out of the terms of such deprivation of liberty.

7. The Government of the United States and the Government of Palau, the Marshall Islands or the Federated States of Micronesia shall assist each other in the carrying out of all necessary investigations into offenses within the scope of this Article, and in the collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offense. The transfer of such objects may be made subject to their return within the time specified by the Government delivering them.

8. Where a person has been tried in accordance with the provisions of this Article, either by the Government of the United States or the Government of Palau, the Marshall Islands or the Federated States of Micronesia, and has been acquitted or convicted, or has been pardoned, he may not be tried again within the same territory for the same offense by either Government. This paragraph is without prejudice to the authority of the Armed Forces of the United States to try a member of the force for any violation of rules of discipline.

9. United States personnel prosecuted under the jurisdiction of the Government of Palau, the Marshall Islands or the Federated States of Micronesia shall be entitled to all guarantees and rights provided by the constitution and laws of the prosecuting Government for its own citizens and to the following guarantees and rights to the extent that they are not provided by that constitution and those laws:

- (a) To a prompt and speedy trial;
- (b) To be tried only in a court presided over by a qualified judge trained in the law;
- (c) To be informed, in advance of trial, of the specific charge or charges made against such person;
- (d) To be confronted with and permitted to cross-examine the witnesses against such person;
- (e) To have compulsory process for obtaining witnesses in favor, of such person, if the witnesses are within the jurisdiction of the court;
- (f) To have legal representation of such person's own choice for such person's defense throughout all investigative and judicial phases of the entire proceedings or, at such person's

election, to have legal representation appointed by the court at no cost to such person under the same terms and conditions applicable to citizens of Palau, the Marshall Islands or the Federated States of Micronesia, as appropriate;

(g) To have the services of a competent interpreter, if such person considers it necessary;

(h) To communicate with a representative of the Government of the United States and to have such a representative present at trial and at all stages of the proceedings, including pretrial hearings and examinations and appeals;

(i) Not to be charged with a criminal offense on account of any act or omission which did not constitute a criminal offense under the statutory law of the prosecuting Government at the time it was committed or be subjected to punishment more severe or a procedure less favorable than the one applicable at the time the offense was committed;

(j) To be present at trial which shall be public;

(k) To have the burden of proof placed upon the prosecution;

(l) To be protected from the use of a confession or other evidence obtained by unlawful or improper means;

(m) Not to be compelled to testify against or otherwise incriminate himself or herself;

(n) Not to be required to stand trial while physically or mentally unfit to stand trial and participate in his or her defense;

(o) Not to be tried or punished more than once for the same offense, nor to be subject to a greater punishment after appeal than was adjudged initially by the court of first instance;

(p) To have the right to appeal a conviction or sentence;

(q) Not to be subject to an appeal by the prosecution from an acquittal, or a finding of not guilty;

(r) To have credited to any sentence of confinement any related period of pretrial confinement in a confinement facility of the Government of the United States or the Government of Palau, the Marshall Islands or the Federated States of Micronesia; and

(s) Not to be subject to the application of martial law or trial by military courts or special tribunals.

10. United States personnel who have been tried in courts of the Government of Palau, the Marshall Islands or the Federated States of Micronesia, and who have been convicted and are serving sen-

tences in confinement facilities of such Government or United States personnel in pretrial custody of such Government, shall be entitled to receive visits not less than monthly from members of their families and from representatives of the Government of the United States. Health and comfort items including clothing, medicine and food may be delivered to and used by such United States personnel in confinement or pretrial custody.

11. Facilities of the Government of Palau, the Marshall Islands or the Federated States of Micronesia used for confinement or detention of United States personnel shall meet standards agreed upon by the Government of the United States and the Government concerned.

12. United States personnel convicted by courts of the Government of Palau, the Marshall Islands or the Federated States of Micronesia shall not be subject to the death penalty, nor to any form of cruel or unusual punishment.

13. This Article is without prejudice to the authority of the Government of the United States to exercise administrative authority over United States personnel.

Article XIII

Additional Criminal Jurisdiction

Article XIV

Respect for Local Law

Article XIV

Respect for Local Law

The Government of the United States shall adopt and enforce measures consistent with the Compact and this Agreement as may be necessary to ensure that United States personnel, United States contractors and third country contractor personnel respect the laws of Palau, the Marshall Islands and the Federated States of Micronesia, refrain from any activity inconsistent with this Agreement, and refrain from any political activity concerning Palau, the Marshall Islands or the Federated States of Micronesia, respectively.

Article XV

Claims

Article XV

Claims

1. The authorities of the Armed Forces of the United States shall pay just and reasonable compensation in settlement of meritorious noncontractual claims arising out of acts or omissions occurring prior or subsequent to the effective date of this Agreement in Palau, the Marshall Islands or the Federated States of Micronesia of members of the force; of members of the civilian component; and, if the act or omission was done in the performance of official duty, of local-hire personnel who are employed by the Armed Forces of the United States. All such claims shall be processed and settled by the authorities of the Armed Forces of the United States in accordance with the laws and regulations of the United States. Any such claims which cannot be settled as provided for in this paragraph, and which are espoused by the Government concerned, shall be referred to the Joint Committee established pursuant to Section 351 of the Compact.

2. Contractual claims against the Armed Forces of the United States shall be settled in accordance with the disputes clause of the contract if any, and the laws of the United States relating to the resolution of such disputes.

3. Subject to the provisions of Article XII of this Agreement, members of the force, members of the civilian component and, if the act or omission was done in the performance of official duty, local-hire personnel shall not be subject to any proceedings in Palau, the Marshall Islands or the Federated States of Micronesia for an act or omission.

4. The Government of the United States shall facilitate appropriate arrangements between the government of any third country which has members or units of its armed forces in Palau, the Marshall Islands or the Federated States of Micronesia pursuant to Section 315 of the Compact and the Government of Palau, the Marshall Islands or the Federated States of Micronesia with respect to appropriate settlement of claims arising from the activities of such members or units.

5. Any judgment presented for certification to the United States Court of Appeals for the Federal Circuit, or its successor court, pursuant to Section 174 of the Compact of Free Association shall be deemed manifestly erroneous as to law if the claim upon which such judgment is based would have been barred by the statute of limitations if such claim had been brought in a court of the United States.

6. Pursuant to Section 174 of the Compact, all claims within the scope of this Article which otherwise would have been within the scope of Section 174 of the Compact shall be settled exclusively in accordance with the provisions of this Article.

Article XVI

Currency

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Article XVI

Currency

The Armed Forces of the United States, United States contractors and United States personnel may import into, possess and use within, and export from Palau, the Marshall Islands and the Federated States of Micronesia, United States currency. Such importation, possession, use and exportation of United States currency shall be exempt from any form of regulation, restriction, or control by the Government of Palau, the Marshall Islands or the Federated States of Micronesia. Should the Government of Palau, the Marshall Islands or the Federated States of Micronesia act pursuant to Section 251 of the Compact to institute a currency other than United States currency, the Government of the United States and the Government concerned shall consult regarding the applicability of foreign exchange laws and regulations in the jurisdiction of the Government concerned.

Article XVII
Medical Services

17-1

Article XVII

Medical Services

To the extent that appropriate services can be made available consistent with available resources and the laws and regulations of the United States, the Government of the United States shall provide, at the request of the Government concerned, medical care to citizens and nationals of Palau, the Marshall Islands and the Federated States of Micronesia in United States military medical facilities or by United States military medical personnel on a reimbursable basis under terms and conditions agreed upon between the Government of the United States and the Government concerned..

Article XVIII

Telecommunications

Article XVIII

Telecommunications

The Government of the United States may use local telecommunication systems and shall do so to the extent feasible. The Government of the United States in determining its uses of such systems shall take into consideration the cost and security of such systems.

(a) To the extent that the Governments of Palau, the Marshall Islands or the Federated States of Micronesia establish complete and fully effective commercial international telecommunications systems compatible with existing United States Government installations, and the Government of the United States determines such use is feasible based on the criteria above, the Government of the United States and the Government concerned shall enter into negotiations for a use arrangement which includes normal billing procedures. Following entering into such a use agreement, the Government of the United States shall withdraw or modify any authorizations for use of Defense communications systems for non-official calls by United States personnel.

(b) The Government of the United States shall encourage the use of local telecommunication systems by United States personnel for non-official purposes.

Article XIX

Effective Date, Amendment and Duration

Article XIX

Effective Date, Amendment and Duration

1. This Agreement shall come into effect simultaneously with the Compact.
2. This Agreement may be amended at any time as to the Government of Palau, the Marshall Islands or the Federated States of Micronesia by mutual consent of such Government and the Government of the United States.
3. The duration of this Agreement as between the Government of the United States and the Government of Palau, the Marshall Islands or the Federated States of Micronesia is for the period of effectiveness of either Title Three of the Compact or of the appropriate separate agreements entered into pursuant to Sections 321 and 323 of the Compact, whichever is the longer. Thereafter, this Agreement shall remain in force until terminated by a Signatory Government, in the following manner:
 - (a) Termination of this Agreement by any Signatory Government shall be effected by a written notification to either the Government of the United States or to the Government of Palau, the Marshall Islands or the Federated States of Micronesia, as appropriate. The Government of the United States shall notify all other Signatory Governments of each such notification.
 - (b) Termination shall take effect one year after the recipient Government has been notified, but this Agreement shall continue in force as between the Government of the United States and the remaining Signatory Governments.
4. This Agreement may be accepted, by signature or otherwise, by the Government of the United States, the Government of Palau, the Government of the Marshall Islands and the Government of the Federated States of Micronesia. Each Government accepting this Agreement shall possess an original English language version.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Status of Forces Agreement which shall come into effect in accordance with its terms between the Government of the United States and the other Governments signatory to this Agreement.

DONE AT WASHINGTON, D.C., THIS 24th DAY

OF May, ONE THOUSAND, NINE HUNDRED EIGHTY

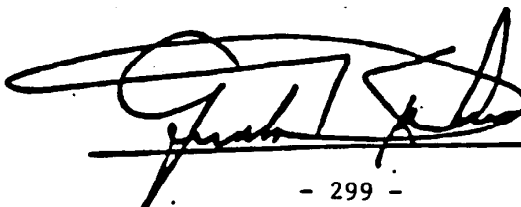
FOR THE GOVERNMENT
OF
THE UNITED STATES OF AMERICA



DONE AT WASHINGTON, D.C., THIS 24th DAY

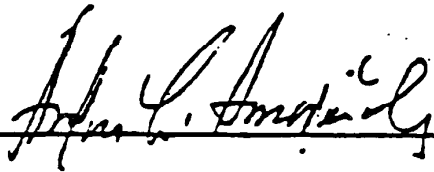
OF May, ONE THOUSAND, NINE HUNDRED EIGHTY

FOR THE GOVERNMENT
OF
THE MARSHALL ISLANDS



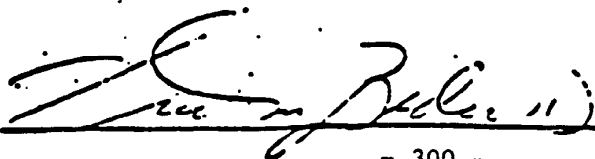
DONE AT Honolulu, Hawaii, THIS 1st DAY
OF October, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT
OF
THE FEDERATED STATES OF MICRONESIA



DONE AT Honolulu, Hawaii, THIS 1st DAY
OF October, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT
OF
THE UNITED STATES OF AMERICA



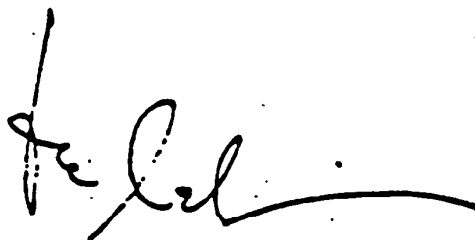
DONE AT Washington, D.C., THIS 26th DAY

OF August, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT

OF

THE REPUBLIC OF PALAU



DONE AT Washington, D.C., THIS 26th DAY

OF August, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT

OF

THE UNITED STATES OF AMERICA



STATUS OF FORCES AGREEMENT

Agreed Minutes

Article VI, Service Facilities: The terms "service, educational and recreational facilities" include schools, commissary stores, retail exchanges and related concessions, credit unions, banking facilities, radio and television stations, recreational facilities, and social and athletic clubs.

Article VII, Military Post Offices: Such military post offices shall be established, operated and maintained exclusively pursuant to the laws and regulations governing the Armed Forces of the United States.

Article VIII, Bearing of Arms: It is the intention of the Signatory Governments that local military commanders and designated representatives of the Government concerned shall enter into an exchange of letters governing the control of privately owned arms. Such an exchange of letters may address the following:

- registration by military authorities of all privately owned arms, and the provision of registration lists, including certificates of transfer or removal of such arms, to the Government concerned;
- designation of target practice areas within defense sites;
- limitations on the carrying of privately owned arms outside defense sites; and
- other provisions for the control by military authorities of privately owned arms.

Article XV, Claims: The Signatory Governments do not intend that paragraph 6 of Article XV preclude the operation of Section 174 of the Compact, provided that paragraph 5 of Article XV governs the operation of Section 174 (c) of the Compact. The import of paragraph 6 of Article XV, read with paragraph 1 of Article XV, is as follows:

-- All claims within the scope of paragraph 1 of Article XV which arise after the effective date of this Agreement shall be processed and settled exclusively pursuant to the Foreign Claims Act, 10 U.S.C. 2734, and any regulations promulgated in implementation thereof.

-- A claim within the scope of paragraph 1 of Article XV which arises during the two year period immediately prior to the effective date of this Agreement shall also be processed and settled pursuant to the Foreign Claims Act, 10 U.S.C. 2734, unless a court action based on such claim has been initiated prior to the effective date of this Agreement and the party bringing such court action continues the court

Agreed Minute

action and proceeds in accordance with Section 174(c) of the Compact. The party bringing such court action may, prior to entry of a final judgment by the court in the action, terminate the action before the court and bring the claim under paragraph 1 of Article XV, in which instance paragraph 6 of Article XV shall govern.

-- Claims arising more than two years prior to the effective date of this Agreement may be brought only in accordance with Section 174(c) of the Compact.

-- A claim processed, settled and paid under paragraph 1 of Article XV may not subsequently be brought under Section 174(c) of the Compact. Similarly, a claim which has proceeded to judgment in a court action and is subject to certification under Section 174(c) of the Compact may not be processed and settled under paragraph 1 of Article XV.

Article XV is without prejudice to any claim addressed in Section 353 of the Compact, whether such claim arises prior or subsequent to the effective date of this Agreement.

Article XVI, Currency: Subject to Article VI this Article is not intended to authorize the establishment or operation of a private financial institution in Palau, the Marshall Islands or the Federated States of Micronesia, except in accordance with local law.

Article XVII, Medical Services: The term "military medical facilities" as used in this Article does not include the contractor-operated medical facility at Kwajalein Island defense site.

Agreement Between
The Government of the United States
and
The Government of the Marshall Islands
Regarding Mutual Security
Concluded Pursuant to Sections 321 and 323 of
The Compact of Free Association

9462 (K)

Agreement Between
The Government of the United States
and
The Government of the Marshall Islands
Regarding Mutual Security
Concluded Pursuant to Sections 321 and 323 of
The Compact of Free Association

PREAMBLE

The Government of the United States and the Government of the Marshall Islands:

Reaffirming their desire to live in peace with all peoples and all governments and their desire to strengthen and support the cause of peace in the Pacific area;

Desiring to declare publicly and formally their common purpose, so that no potential aggressor can assume that either of them stands alone in the Pacific area;

Mindful that the Government of the United States and the Government of the Marshall Islands, in the exercise of their respective capacities for the conduct of foreign affairs, have entered and do enter into agreements which are implemented in accordance with their respective constitutional processes; and

Reaffirming the purposes and principles of the Compact of Free Association;

NOW THEREFORE AGREE:

ARTICLE I

The Government of the United States and the Government of the Marshall Islands rededicate themselves to the principle that any international disputes in which they may be involved shall be settled by peaceful means and in such a manner that international peace, security and justice are not endangered.

ARTICLE II

The Government of the United States and the Government of the Marshall Islands shall consult at the request of either Government, whenever the political independence of either of them or their mutual security is threatened in the Pacific.

ARTICLE III

The government of the United States and the Government of the Marshall Islands recognize that, in view of the special relationship between their peoples, any attack on the Marshall Islands would constitute a threat to the peace and security of the Pacific area and a danger to the United States. In the

ARTICLE VII

This Agreement shall come into effect upon the expiration or termination of Title Three of the Compact of Free Association.

ARTICLE VIII

This Agreement shall remain in full force and effect until terminated or otherwise amended by mutual consent.

ARTICLE IX

The Definition of Terms set forth in Article VI of Title Four of the Compact are incorporated in this Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorized for the purpose, have signed the present agreement.

DONE at WASHINGTON, D.C., in duplicate,
this 24th, day of MAY, nineteen hundred and
eighty-two.

FOR THE GOVERNMENT OF THE MARSHALL ISLANDS:



FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:



SECTION 00800
APPENDIX E

Agreement Between
the Government of the United States
and
the Government of the Federated States of Micronesia
Regarding Implementation of the
Compact of Free Association

48 USC 1681

**Agreement Between
the Government of the United States
and
the Government of the Federated States of Micronesia
Regarding Implementation of the
Compact of Free Association**

PREAMBLE

The Government of the United States and the Government of the Federated States of Micronesia:

Recognizing that the Compact of Free Association, signed by the Government of the United States and the Government of the Federated States of Micronesia on October 1, 1982 (the Compact), has, along with its related agreements, been approved by the Governments of the Federated States of Micronesia and the United States in accordance with their respective constitutional processes and been approved in accordance with Section 411(b) of the Compact; and

Reaffirming the common interest of the United States and the Federated States of Micronesia in creating a close and mutually beneficial relationship through a free and voluntary association of their Governments;

Desiring to bring the Compact fully into effect at the earliest possible date for their mutual benefit; and

Recognizing their common desire to terminate application of the Trusteeship Agreement to the Federated States of Micronesia;

NOW, THEREFORE, AGREE that the Compact shall enter into force and effect on the date specified in this Agreement and that provision for other related matters is made in the manner set forth in this Agreement.

ARTICLE I

Compact Effective Date

1. The Government of the United States and the Government of the Federated States of Micronesia agree, pursuant to Section 411 of the Compact, that the effective date of the Compact shall be November 3, 1986.

2. For purposes of the Compact and its related agreements, the first anniversary of the effective date of the Compact and its related agreements shall be October 1, 1987 and the fifteenth anniversary of the effective date of the Compact shall be October 1, 2001. Matters related to implementation of the governmental relations, economic assistance and general provisions of the Compact shall be set forth in an agreement to be concluded by the Government of the United States and the Government of the Federated States of Micronesia as soon as possible.

ARTICLE II

Effective Date, Amendments and Termination

1. This Agreement shall come into effect upon signature by the signatory governments.
2. This Agreement may be amended at any time by mutual consent of the Government of the United States and the Government of the Federated States of Micronesia.
3. This Agreement may be terminated at any time by mutual consent of the Government of the United States and the Government of the Federated States of Micronesia.
4. This Agreement may be terminated unilaterally by either the Government of the United States or the Government of the Federated States of Micronesia prior to the effective date of the Compact as specified in Article I of this Agreement, such termination to be effective on the date specified in the notice of termination by the notifying government to the other government but not earlier than the date of delivery of such notice. The time specified in the notice of termination may be extended by the notifying government.
5. This Agreement may be accepted, by signature or otherwise, by the Government of the United States and the Government of the Federated States of Micronesia.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Agreement Regarding Implementation of the Compact of Free Association which shall come into effect in accordance with its terms.

AGREEMENT FOR IMPLEMENTATION
OF THE COMPACT OF FREE ASSOCIATION
BETWEEN
THE GOVERNMENT OF THE UNITED STATES
AND
THE GOVERNMENT OF THE REPUBLIC OF THE MARSHALL ISLANDS

PREAMBLE

THE GOVERNMENT OF THE REPUBLIC OF THE MARSHALL ISLANDS
AND
THE GOVERNMENT OF THE UNITED STATES

RECOGNIZING that the Compact of Free Association, signed by the Government of the United States and the Government of the Marshall Islands on 25 June 1983 (the Compact), has, along with the related agreements listed in Section 462 of the Compact, been approved by the governments of the Marshall Islands and the United States in accordance with their respective constitutional processes and with Section 411 of the Compact; and

AFFIRMING the common interest of the United States and the Marshall Islands in creating a close and mutually beneficial relationship through a free and voluntary association of their governments; and

DESIRING to bring the Compact fully into effect at the earliest possible date for their mutual benefit;

NOW, THEREFORE, AGREE that the Compact shall enter fully into force and effect on the date specified in this agreement and that provision for other related matters is made in the manner set forth in this agreement.

ARTICLE I
COMPACT EFFECTIVE DATE

The Government of the United States and the Government of the Marshall Islands agree, pursuant to Section 411 of the Compact, that the effective date of the Compact shall be 21 October 1986. Pursuant to United States Public Law 99-349, and subject to the ultimate appropriation authority of the United States Congress, the economic assistance provisions of the Compact are effective from 1 October 1985. The agreements listed in Section 462 of the Compact and the additional agreements concluded as of the effective date of this agreement pursuant to the Compact, United States Public Law 99-239 and Nitijela Resolution No. 62 shall also enter into force on 21 October 1986.

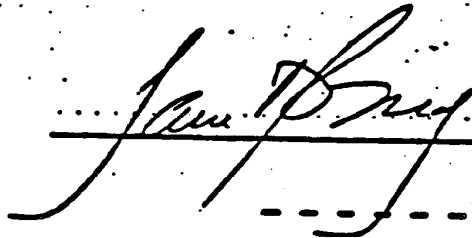
Agreement Between
the Government of the United States
and
the Government of the Federated States of Micronesia
Regarding Implementation of the
Compact of Free Association

DONE AT WASHINGTON DC, THIS 24 TH DAY
OF OCTOBER, ONE THOUSAND, NINE HUNDRED AND EIGHTY-SIX

FOR THE GOVERNMENT

OF

THE UNITED STATES OF AMERICA




DONE AT WASHINGTON DC, THIS 24 TH DAY
OF OCTOBER, ONE THOUSAND, NINE HUNDRED AND EIGHTY-SIX

FOR THE GOVERNMENT

OF

THE FEDERATED STATES OF MICRONESIA



ARTICLE II
ECONOMIC ASSISTANCE

SECTION 1. Definitions. Except as otherwise provided in this agreement, the Definitions of Terms set forth in the "Agreement Concerning Procedures for the Implementation of United States Economic Assistance, Programs and Services Provided in the Compact of Free Association between the Government of the United States and the Government of the Marshall Islands" (the Fiscal Procedures Agreement) is by this reference incorporated in this agreement.

SECTION 2. Fiscal Procedures. Funding available for the Marshall Islands under the Compact and United States Public Law 99-239 for the first and second years of the Compact, which years coincide with fiscal years 1986 and 1987, shall be provided pursuant to the Fiscal Procedures Agreement, except as otherwise provided by the procedures set forth in this agreement.

SECTION 3. Designated Bank. Subject to the provisions of Article III of this agreement and in furtherance of Paragraph 1(a) of Article II of the Fiscal Procedures Agreement, the Government of the Marshall Islands designates, and the Government of the United States recognizes, the Bank of Hawaii for receipt of the funding specified in this agreement and the Fiscal Procedures Agreement.

SECTION 4. Fiscal Year 1986 Funding.

(a) As soon as practicable after the effective date of the Compact, the Government of the United States shall pay to the Government of the Marshall Islands for fiscal year 1986 funding designated in the Compact and United States Public Law 99-239 to be paid to the Marshall Islands for the first year of the Compact, less offsets for the fiscal year 1986 Department of the Interior operations grant of \$10.94 million and satellite communications grant of \$266,000 and the Department of Defense land use payments for the Kwajalein Missile Range (XMR) of \$10,032,338.00.

(b) In furtherance of Paragraph 1(b) of Article II of the Fiscal Procedures Agreement, the Government of the United States shall, as soon as practicable, notify the Government of the Marshall Islands of the total amounts of funding expected to be available for fiscal year 1986 pursuant to this agreement.

(c) In furtherance of Paragraphs 1(b), 2(c) and 3(b) of Article II of the Fiscal Procedures Agreement, the Government of the Marshall Islands provides, and the Government of the United States accepts, the following allocation schedule for the economic assistance funding designated in Title Two of the Compact:

(1) current account -- from funding specified in Section 211(a)(1) of the Compact the amount of \$15.20 million,

from funding in the adjustment account the amount that results from the operation of Section 217 of the Compact upon \$4.26 million, and the funding specified in Sections 213(a), 215(a), 216(a)(2) and 216(a)(3), and 221(b) of the Compact; and

(ii) capital account -- the balance of funding specified in Section 211(a)(1) of the Compact, the funding specified in Sections 215(b), 216(a)(1) and 216(b) of the Compact and the balance of funding in the adjustment account.

SECTION 5. Fiscal Year 1987 Funding.

(a) The Government of the United States shall pay to the Government of the Marshall Islands for fiscal year 1987 funding specified in the Compact and United States Public Law 99-239, to be paid to the Government of the Marshall Islands for the second year of the Compact. As soon as practicable after the effective date of the Compact, the Government of the United States shall pay to the Government of the Marshall Islands the first quarterly allocation of such funding, less offsets for the Department of the Interior operations grant and satellite communications grant paid in fiscal year 1987 and Department of Defense land use payments for KMR paid in fiscal year 1987.

(b) In furtherance of Paragraph 1(b) of Article II of the Fiscal Procedures Agreement, the Government of the United States shall, as soon as practicable, notify the Government of the Marshall Islands of the total amounts of funding expected to be available for fiscal year 1987 pursuant to this agreement, including the first transfer of funding in the adjustment account.

(c) In furtherance of Paragraphs 1(b), 2(c) and 3(b) of Article II of the Fiscal Procedures Agreement, the Government of the Marshall Islands provides, and the Government of the United States accepts, the following annual current/capital account allocation schedule and quarterly allocation schedule:

(i) current account -- from funding specified in Section 211(a)(1) of the Compact the amounts of \$15.66 million, from funding in the adjustment account the amount that results from the operation of Section 217 of the Compact upon \$4.26 million, and the funding specified in Sections 213(a), 215(a), 216(a) and 221(b) of the Compact. Except for funding specified in Section 216(a)(3) of the Compact which shall be paid with the first quarterly allocation, the quarterly allocation shall be in percentages of 30, 30, 20 and 20, unless modified by the Government of the Marshall Islands in accordance with the Fiscal Procedures Agreement; and

(ii) capital account -- the balance of funding specified in Section 211 of the Compact, the funding specified in Section 214 of the Compact, and the balance of funding in the adjustment account. Such capital account funding shall be obligated to the Marshall Islands Development Authority for

payment with the first quarterly allocation, except the funding in the adjustment account which is to be paid in the forth quarter pursuant to the Fiscal Procedures Agreement.

(d) The United States shall provide to the Marshall Islands funding specified in Section 219 of the Compact in accordance with its provisions and as determined by appropriations acts of the Government of the United States, including the funding provided pursuant to Project Grant Agreements between the Marshall Islands and the Trust Territory Government and other such grants of the Government of the United States appropriated for fiscal year 1986 and preceding fiscal years.

SECTION 6. Audits and Annual Reports. All audits and annual reports specified in the Fiscal Procedures Agreement for fiscal year 1986 shall be combined and filed with such audits and reports for fiscal year 1987.

SECTION 7. Federal Programs. The grants, programs and services of the Government of the United States set forth in the Compact and the related agreements listed in Section 462 of the Compact, and the grants, programs and services of the Government of the United States for which the Government of the Marshall Islands is eligible under United States Public Law 99-239, as amended, shall be made available to the Government of the Marshall Islands for the purposes and duration provided in the laws of the United States.

ARTICLE III NUCLEAR CLAIMS SETTLEMENT

The Government of the United States shall transfer to the Marshall Islands for implementation of the "Agreement to Implement Section 177 of the Compact of Free Association between the Government of the United States and the Government of the Marshall Islands" the funding specified in Section 177 of the Compact as soon as practicable after the effective date of the Compact. In furtherance of Paragraph 1(a) of Article II of the Fiscal Procedures Agreement, the Government of the Marshall Islands designates, and the Government of the United States recognizes, the Irving Trust Company, Inc., as the Fund Manager for receipt of funding specified under Section 177 of the Compact.

ARTICLE IV DEFENSE RELATED MATTERS

SECTION 1. Telecommunications. Recognizing that the Government of the Marshall Islands has, or will have, a complete and fully effective commercial international telecommunication system compatible with existing United States installations at KMR, the Government of the United States shall, upon the execution of this agreement, enter into negotiations with the Government of the

Marshall Islands to conclude an agreement to make use of the Government of the Marshall Islands telecommunication system, to the extent feasible, for non-official calls by United States personnel, in accordance with Article XVIII of the "Status of Forces Agreement Concluded Pursuant to Section 323 of The Compact of Free Association" (SOFA). The Government of the United States shall advise the Government of the Marshall Islands as soon as practicable of the existence of inadequacies, if any, in the present telecommunication system of the Government of the Marshall Islands.

SECTION 2. The Disposal of Surplus Equipment. In furtherance of Article XI of the SOFA, during the term of the "Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Marshall Islands Concluded Pursuant to Section 321 and 323 of the Compact of Free Association" (MUORA), KMR shall make excess property available to the Government of the Marshall Islands at the lowest possible price consistent with Department of Defense and other applicable regulations.

SECTION 3. Recognition, Landing Rights and Fees in respect to the Airline of the Marshall Islands.

(a) As of the effective date of the Compact, the Government of the United States and the Government of the Marshall Islands consent to the classification of the Airline of the Marshall Islands, Inc. (AMI), as a "Freely Associated State Air Carrier" pursuant to, and for the purposes of, Article IX, Paragraph 5(b), of the "Federal Programs and Services Agreement Concluded Pursuant to Article II of Title Two and Section 232 of the Compact of Free Association" (FPSA). After such classification, the operation of AMI as a "Freely Associated State Air Carrier" is, for the purposes of Article IX, Paragraphs 5(c)(d) and (e), of the FPSA, subject to the issuance of appropriate licensing authority by the United States Department of Transportation.

(b) The Government of the United States agrees to negotiate and conclude an agreement with the Government of the Marshall Islands consistent with the provisions of Article V, Section 2, of MUORA in respect to landing rights for and fees charged to AMI. The landing fees charged shall reflect the actual cost, direct and indirect, of servicing AMI aircraft, consistent with Department of Defense and Department of the Army regulations.

SECTION 4. Coastal Resource Atlases and Coastal Zone Management Plans for the Marshall Islands. Pursuant to Section 226 of the Compact, the Government of the Marshall Islands requests that the Government of the United States, at no compensation, provide to the Government of the Marshall Islands the services of the United States Corps of Engineers "Section 22 Planning Assistance to States", to prepare coastal resource atlases and coastal zone management plans for the Marshall Islands. The Government of the United States agrees to expeditiously consider this request.

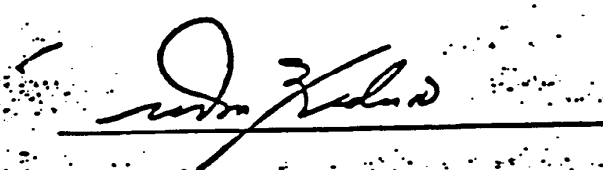
ARTICLE V
EFFECTIVE DATE

This agreement shall enter into force on 15 October 1986 and shall remain in force until the expiration or the termination of Title Two of the Compact.

AGREEMENT FOR IMPLEMENTATION
OF THE COMPACT OF FREE ASSOCIATION
BETWEEN
THE GOVERNMENT OF THE UNITED STATES
AND
THE GOVERNMENT OF THE REPUBLIC OF THE MARSHALL ISLANDS

DONE AT MAJURO, MARSHALL ISLANDS, THIS TENTH DAY OF OCTOBER,
ONE THOUSAND, NINE HUNDRED AND EIGHTY-SIX

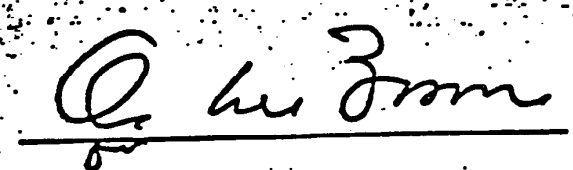
FOR THE GOVERNMENT
OF
THE UNITED STATES OF AMERICA



A handwritten signature in dark ink, appearing to be "R. F. Kennedy", is written over a solid horizontal line. Below this line is a dashed horizontal line.

DONE AT MAJURO, MARSHALL ISLANDS, THIS TENTH DAY OF OCTOBER,
ONE THOUSAND, NINE HUNDRED AND EIGHTY-SIX

FOR THE GOVERNMENT
OF
THE MARSHALL ISLANDS



A handwritten signature in dark ink, appearing to be "A. H. Brown", is written over a solid horizontal line.

AGREEMENT FOR IMPLEMENTATION
OF THE COMPACT OF FREE ASSOCIATION
BETWEEN
THE GOVERNMENT OF THE UNITED STATES
AND
THE GOVERNMENT OF THE REPUBLIC OF THE MARSHALL ISLANDS

AMENDMENT NO. 1

PREAMBLE

THE GOVERNMENT OF THE REPUBLIC OF THE MARSHALL ISLANDS
AND
THE GOVERNMENT OF THE UNITED STATES

AFFIRMING that the Compact of Free Association (the Compact) and its related agreements will enter into full force and effect on 21 October 1986 in accordance with the Agreement for Implementation of the Compact of Free Association between the Government of the United States and the Government of the Marshall Islands (the Agreement), signed on 10 October 1986 and entered into force on 15 October 1986; and

RECOGNIZING that after the signature and effective date of the Agreement, the United States Congress enacted legislation requiring adjustments to the terms of the Agreement; and

DESIRING to set forth further agreements and mutual understandings between them in conjunction with the effective date of the Compact;

NOW, THEREFORE, AGREE that this Amendment No. 1 is made a full and integral part of the Agreement and that provision for matters related to the entry into force of the Compact is made in the manner set forth in this Amendment No. 1 to the Agreement.

ARTICLE I
AMENDMENTS TO THE AGREEMENT

The specified parts of the Agreement are amended as set forth below.

SECTION 1. Implementation. Article I of the Agreement is amended by deleting its second sentence.

SECTION 2. Fiscal Procedures. Section 2 of Article II of the Agreement is amended to read as follows:

"SECTION 2. Fiscal Procedures. Funding available to the Government of the Marshall Islands under the Compact and United States Public Law 99-239 for the first year of the Compact, which year coincides with fiscal year 1987, shall be provided pursuant to the Fiscal Procedures Agreement, except as otherwise provided by the procedures set forth in this agreement."

SECTION 3. Fiscal Year 1986 Funding. Section 4 of Article II of the agreement is deleted.

SECTION 4. Fiscal Year 1987 Funding. Paragraph (a) of Section 5 of Article II of the Agreement is amended to read as follows:

"(a) The Government of the United States shall pay to the Government of the Marshall Islands for fiscal year 1987 funding specified in the Compact and United States Public Law 99-239, to be paid to the Government of the Marshall Islands for the first year of the Compact. As soon as practicable after the effective date of the Compact, the Government of the United States shall pay to the Government of the Marshall Islands the first quarterly allocation of such funding, less offsets for Department of Interior Operations grant and satellite communications grant paid in fiscal year 1987 and the Department of Defense land use payments for Kwajalein Missile Range (KMR) paid in fiscal year 1987."

SECTION 5. Current Account for Fiscal Year 1987. Subparagraph (i) of Paragraph (c) of Section 5 of Article II of the Agreement is amended to read as follows:

"(i) current account — from funding specified in Section 211(a)(1) of the Compact the amount of \$15.66 million, from funding in the adjustment account the amount that results from the operation of Section 217 of the Compact upon \$4.26 million, and the funding specified in Sections 213(a), 215(a), 216(a)(2) and 216(a)(3), and 221(b) of the Compact. Except for funding specified in Section 216(a)(3) of the Compact which shall be paid with the first quarterly allocation, the quarterly allocations shall be in the percentages of 30, 30, 20 and 20, unless modified by the Government of the Marshall Islands in accordance with the Fiscal Procedures Agreement; and"

SECTION 6. Capital Account for Fiscal Year 1987. Subparagraph (ii) of Paragraph (c) of Section 5 of Article II of the Agreement is amended to read as follows:

"(ii) capital account — the balance of the funding specified in Section 211(a)(1) of the Compact, the funding specified in Sections 215(b), 216(a)(1) and 216(b) of the

Compact, and the balance of the funding in the adjustment account. Such capital account funding shall be obligated to the Marshall Islands Development Authority for payment with the first quarterly allocation, except funding in the adjustment account which is to be paid in the fourth quarter pursuant to the Fiscal Procedures Agreement."

SECTION 7. Section 6 of Article II of the Agreement is deleted.

SECTION 8. Federal Programs. Section 7 of Article II of the Agreement is amended to read as follows:

"Section 7. Federal Programs.

a) The grants, programs and services of the Government of the United States for which the Government of the Marshall Islands is eligible under United States Public Law 99-239, as amended, shall be made available to the Government of the Marshall Islands for the purposes and duration provided therein.

(b) The grants, programs and services of the Government of the United States for which the Marshall Islands is eligible pursuant to United States House Joint Resolution 626 shall, upon signature by the President of the United States of such House Joint Resolution, be made available to the Marshall Islands for the purposes and duration provided therein.

(c) The Government of the United States shall take such administrative action as is necessary, in accordance with the laws of the United States, to accomplish the purposes of this section."

ARTICLE II GENERAL PROVISIONS

SECTION 1. Investment Development Fund. The Government of the Marshall Islands requests and that the \$6.0 million and the \$4.0 million contributions to the Investment Development Fund to be provided pursuant to Section 111(b)(1)(ii) of United States Public Law 99-239 be transferred to the Government of the Marshall Islands on the effective date of the Compact and on 1 October 1989, respectively. The Government of the United States shall sympathetically and expeditiously consider this request, and take whatever administrative or legislative actions are necessary to act on this request.

SECTION 2. Section 221(c) of the Compact. For purposes of Section 221(c) of the Compact, the "day preceding the effective date of this Compact" shall be the period 30 September 1986 through the day preceding the effective date of the Compact.

SECTION 3. Transition. As of the effective date of the Compact, the Compact shall be the controlling and defining instrument of the relationship between the United States and the Republic of the Marshall Islands and the authority and responsibility of the Government of the United States and the Government of the Marshall Islands with respect to their relationship shall be as set forth in the Compact, as approved by United States Public Law 99-239, as amended, and Marshall Islands Nitijela Resolution 62. The Government of the United States recognizes that the people of the Republic of the Marshall Islands have and retain their sovereignty and, acting through the Government of the Marshall Islands, are self-governing.

ARTICLE III
EFFECTIVE DATE AND DURATION

This Amendment No. 1 to the Agreement shall enter into force upon signature by the Signatory Governments and shall remain in effect for the duration of the Agreement.

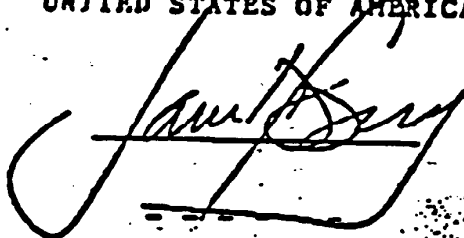
IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Amendment No. 1 to the Agreement Regarding Implementation of the Compact of Free Association Between the Government of the United States and the Government of the Republic of the Marshall Islands, which shall come into effect in accordance with its terms.

AGREEMENT FOR IMPLEMENTATION
OF THE COMPACT OF FREE ASSOCIATION
BETWEEN
THE GOVERNMENT OF THE UNITED STATES
AND
THE GOVERNMENT OF THE REPUBLIC OF THE MARSHALL ISLANDS

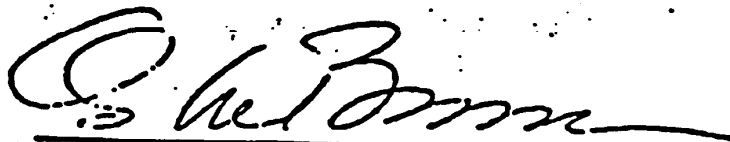
AMENDMENT NO. 1

DONE AT MAJURO, REPUBLIC OF THE MARSHALL ISLANDS, THIS TWENTIETH
DAY OF OCTOBER, ONE THOUSAND, NINE HUNDRED AND EIGHTY-SIX.

FOR THE GOVERNMENT
OF THE
UNITED STATES OF AMERICA

A handwritten signature in dark ink, appearing to read "James H. Derry", written over a horizontal line.

FOR THE GOVERNMENT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

A handwritten signature in dark ink, appearing to read "Charles Brown", written over a horizontal line.

COMPACT OF FREE ASSOCIATION

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PREAMBLE

THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENTS OF PALAU, THE MARSHALL
ISLANDS AND THE FEDERATED STATES OF MICRONESIA,

Affirming that their Governments and their relationships as Governments are founded upon respect for human rights and fundamental freedoms for all, and that the peoples of the Trust Territory of the Pacific Islands have the right to enjoy self-government; and

Affirming the common interests of the United States of America and the peoples of the Trust Territory of the Pacific Islands in creating close and mutually beneficial relationships through three free and voluntary associations of their respective Governments; and

Affirming the interest of the Government of the United States in promoting the economic advancement and self-sufficiency of the peoples of the Trust Territory of the Pacific Islands; and

Recognizing that their previous relationship has been based upon the International Trusteeship System of the United Nations Charter, and in particular Article 76 of the Charter; and that pursuant to Article 76 of the Charter, the peoples of the Trust Territory have progressively developed their institutions of self-government; and that in the exercise of their sovereign right to self-determination they have, through their freely-expressed wishes, adopted Constitutions appropriate to their particular circumstances; and

Recognizing their common desire to terminate the Trusteeship and establish three new government-to-government relationships each of which is in accordance with a new political status based on the freely-expressed wishes of peoples of the Trust Territory of the Pacific Islands and appropriate to their particular circumstances; and

Recognizing that the peoples of the Trust Territory of the Pacific Islands have and retain their sovereignty and their sovereign right to self-determination and the inherent right to adopt and amend their own Constitutions and forms of government and that the approval of the entry of their respective Governments into this Compact of Free Association by the peoples of the Trust Territory of the Pacific Islands constitutes an exercise of their sovereign right to self-determination;

NOW, THEREFORE, AGREE to enter into relationships of free association which provide a full measure of self-government for the peoples of Palau, the Marshall Islands and the Federated States of Micronesia; and

FURTHER AGREE that the relationships of free association derive from and are as set forth in this Compact; and that, during such relationships of free association, the respective rights and responsibilities of the Government of the United States and the Governments of the freely associated states of Palau, the Marshall Islands and the Federated States of Micronesia in regard to these relationships of free association derive from and are as set forth in this Compact.

TITLE ONE
GOVERNMENTAL RELATIONS

Article II

Foreign Affairs

Section 121

(a) The Governments of Palau, the Marshall Islands and the Federated States of Micronesia have the capacity to conduct foreign affairs and shall do so in their own name and right, except as otherwise provided in this Compact.

(b) The foreign affairs capacity of the Governments of Palau, the Marshall Islands and the Federated States of Micronesia includes:

- (1) the conduct of foreign affairs relating to law of the sea and marine resources matters, including the harvesting, conservation, exploration or exploitation of living and non-living resources from the sea, seabed or subsoil to the full extent recognized under international law;
- (2) the conduct of their commercial, diplomatic, consular, economic, trade, banking, postal, civil aviation, communications, and cultural relations, including negotiations for the receipt of developmental loans and grants and the conclusion of arrangements with other governments and international and intergovernmental organizations, including any matters specially benefiting their individual citizens.

(c) The Government of the United States recognizes that the Governments of Palau, the Marshall Islands and the Federated States of Micronesia have the capacity to enter into, in their own name and right, treaties and other international agreements with governments and regional and international organizations.

(d) In the conduct of their foreign affairs, the Governments of Palau, the Marshall Islands and the Federated States of Micronesia confirm that they shall act in accordance with principles of international law and shall settle their international disputes by peaceful means.

Section 122

The Government of the United States shall support applications by the Governments of Palau, the Marshall Islands and the Federated States of Micronesia for membership or other participation in regional or international organizations as may be mutually agreed. The Government of the United States agrees to accept for training

and instruction at the Foreign Service Institute, established under 22 U.S.C. 4021, citizens of Palau, the Marshall Islands and the Federated States of Micronesia. The qualifications of candidates for such training and instruction and all other terms and conditions of participation by citizens of Palau, the Marshall Islands and the Federated States of Micronesia in Foreign Service Institute programs shall be as mutually agreed between the Government of the United States and the Governments of Palau, the Marshall Islands and the Federated States of Micronesia.

Section 123

(a) In recognition of the authority and responsibility of the Government of the United States under Title Three, the Governments of Palau, the Marshall Islands and the Federated States of Micronesia shall consult, in the conduct of their foreign affairs, with the Government of the United States.

(b) In recognition of the respective foreign affairs capacities of the Governments of Palau, the Marshall Islands and the Federated States of Micronesia, the Government of the United States, in the conduct of its foreign affairs, shall consult with the Government of Palau, the Marshall Islands or the Federated States of Micronesia on matters which the Government of the United States regards as relating to or affecting any such Government.

Section 124

The Government of the United States may assist or act on behalf of the Government of Palau, the Marshall Islands or the Federated States of Micronesia in the area of foreign affairs as may be requested and mutually agreed from time to time. The Government of the United States shall not be responsible to third parties for the actions of the Government of Palau, the Marshall Islands or the Federated States of Micronesia undertaken with the assistance or through the agency of the Government of the United States pursuant to this Section unless expressly agreed.

Section 125

The Government of the United States shall not be responsible for nor obligated by any actions taken by the Government of Palau, the Marshall Islands or the Federated States of Micronesia in the area of foreign affairs, except as may from time to time be expressly agreed.

Section 126

At the request of the Government of Palau, the Marshall Islands or the Federated States of Micronesia and subject to the consent of the receiving state, the Government of the United States shall extend consular assistance on the same basis as for citizens of the United States to citizens of Palau, the Marshall

Islands and the Federated States of Micronesia for travel outside Palau, the Marshall Islands and the Federated States of Micronesia, the United States and its territories and possessions.

Section 127

Except as otherwise provided in this Compact or its related agreements, all obligations, responsibilities, rights and benefits of the Government of the United States as Administering Authority which have resulted from the application pursuant to the Trusteeship Agreement of any treaty or other international agreement to the Trust Territory of the Pacific Islands on the day preceding the effective date of this Compact are no longer assumed and enjoyed by the Government of the United States.

Article III

CommunicationsSection 131

(a) The Governments of Palau, the Marshall Islands and the Federated States of Micronesia have full authority and responsibility to regulate their respective domestic and foreign communications, and the Government of the United States shall provide communication assistance in accordance with the terms of a separate agreement which shall come into effect simultaneously with this Compact, and such agreement shall remain in effect until such time as any election is made pursuant to Section 131(b) and which shall provide for the following:

- (1) the Government of the United States remains the sole administration entitled to make notification to the International Frequency Registration Board of the International Telecommunications Union of frequency assignments to radio communications stations respectively in Palau, the Marshall Islands and the Federated States of Micronesia; and to submit to the International Frequency Registration Board seasonal schedules for the broadcasting stations respectively in Palau, the Marshall Islands and the Federated States of Micronesia in the bands allocated exclusively to the broadcasting service between 5,950 and 26,100 kh and in any other additional frequency bands that may be allocated to use by high frequency broadcasting stations; and
- (2) the United States Federal Communications Commission has jurisdiction, pursuant to the Communications Act of 1934, 47 U.S.C. 151 et. seq., and the Communications Satellite Act of 1962, 47 U.S.C. 721 et. seq., over all domestic and foreign communications services furnished by means of satellite earth terminal stations where such stations are owned or operated by United States common carriers and are located in Palau, the Marshall Islands or the Federated States of Micronesia.

(b) The Government of Palau, the Marshall Islands or the Federated States of Micronesia may elect at any time to undertake the functions enumerated in Section 131(a) and previously performed by the Government of the United States. Upon such election, the Government of the United States shall so notify the International Frequency Registration Board and shall take such other actions as may be necessary to transfer to the electing Government the notification authority referred to in Section 131(a) and all rights deriving from the previous exercise of any such notification authority by the Government of the United States.

Section 132

The Governments of Palau, the Marshall Islands and the Federated States of Micronesia shall permit the Government of the United States to operate telecommunications services in Palau, the Marshall Islands and the Federated States of Micronesia to the extent necessary to fulfill the obligations of the Government of the United States under this Compact in accordance with the terms of separate agreements which shall come into effect simultaneously with this Compact.

Article IV

ImmigrationSection 141

(a) Any person in the following categories may enter into, lawfully engage in occupations, and establish residence as a non-immigrant in the United States and its territories and possessions without regard to paragraphs (14), (20), and (26) of section 212(a) of the Immigration and Nationality Act, 8 U.S.C. 1182(a) (14), (20), and (26):

- (1) A person who, on the day preceding the effective date of this Compact, is a citizen of the Trust Territory of the Pacific Islands, as defined in Title 53 of the Trust Territory Code in force on January 1, 1979, and has become a citizen of Palau, the Marshall Islands or the Federated States of Micronesia;
- (2) A person who acquires the citizenship of Palau, the Marshall Islands or the Federated States of Micronesia at birth, on or after the effective date of the respective Constitution;
- (3) A naturalized citizen of Palau, the Marshall Islands or the Federated States of Micronesia who has been an actual resident there for not less than five years after attaining such naturalization and who holds a certificate of actual residence; or
- (4) A person entitled to citizenship in the Marshall Islands by lineal descent whose name is included in a list to be furnished by the Government of the Marshall Islands to the United States Immigration and Naturalization Service and any descendants of such persons, provided that such person holds a certificate of lineal descent issued by the Government of the Marshall Islands.

Such persons shall be considered to have the permission of the Attorney General of the United States to accept employment in the United States.

(b) The right of such persons to establish habitual residence in a territory or possession of the United States may, however, be subjected to non-discriminatory limitations provided for:

- (1) in statutes or regulations of the United States; or
- (2) in those statutes or regulations of the territory or possession concerned which are authorized by the law of the United States.

(c) Section 141(a) does not confer on a citizen of Palau, the Marshall Islands or the Federated States of Micronesia the right to establish the residence necessary for naturalization under the Immigration and Nationality Act, or to petition for benefits for alien relatives under that Act. Section 141(a), however, shall not prevent a citizen of Palau, the Marshall Islands or the Federated States of Micronesia from otherwise acquiring such rights or lawful permanent resident alien status in the United States.

Section 142

(a) Any citizen or national of the United States may enter into, lawfully engage in occupations, and reside in Palau, the Marshall Islands or the Federated States of Micronesia, subject to the rights of those Governments to deny entry to or deport any such citizen or national as an undesirable alien. A citizen or national of the United States may establish habitual residence or domicile in Palau, the Marshall Islands or the Federated States of Micronesia only in accordance with the laws of the jurisdiction in which habitual residence or domicile is sought.

(b) With respect to the subject matter of this Section, the Government of Palau, the Marshall Islands or the Federated States of Micronesia shall accord to citizens and nationals of the United States treatment no less favorable than that accorded to citizens of other countries; any denial of entry to or deportation of a citizen or national of the United States as an undesirable alien must be pursuant to reasonable statutory grounds.

Section 143

(a) The privileges set forth in Sections 141 and 142 shall not apply to any person who takes an affirmative step to preserve or acquire a citizenship or nationality other than that of Palau, the Marshall Islands, the Federated States of Micronesia or the United States.

(b) Every person having the privileges set forth in Sections 141 and 142 who possesses a citizenship or nationality other than that of Palau, the Marshall Islands, the Federated States of Micronesia or the United States ceases to have these privileges two years after the effective date of this Compact, or within six months after becoming 21 years of age, whichever comes later, unless such person executes an oath of renunciation of that other citizenship or nationality.

Section 144

(a) A citizen or national of the United States who, after notification to the Government of the United States of an intention to employ such person by the Government of Palau, the Marshall Islands or the Federated States of Micronesia, commences

employment with such Government shall not be deprived of his United States nationality pursuant to Section 349(a)(2) and (a)(4) of the Immigration and Nationality Act, 8 U.S.C. 1481 (a)(2) and (a)(4).

(b) Upon such notification by the Government of Palau, the Marshall Islands or the Federated States of Micronesia, the Government of the United States may consult with or provide information to the notifying Government concerning the prospective employee, subject to the provisions of the Privacy Act, 5 U.S.C. 552a.

(c) The requirement of prior notification shall not apply to those citizens or nationals of the United States who are employed by the Government of Palau, the Marshall Islands or the Federated States of Micronesia on the effective date of this Compact with respect to the positions held by them at that time.

Article V

RepresentationSection 151

The Government of the United States and the Government of Palau, the Marshall Islands or the Federated States of Micronesia may establish and maintain representative offices in the capital of the other for the purpose of maintaining close and regular consultations on matters arising in the course of the relationship of free association and conducting other government business. The Governments may establish and maintain additional offices on terms and in locations as may be mutually agreed.

Section 152

(a) The premises of such representative offices, and their archives wherever located, shall be inviolable. The property and assets of such representative offices shall be immune from search, requisition, attachment and any form of seizure unless such immunity is expressly waived. Official communications in transit shall be inviolable and accorded the freedom and protections accorded by recognized principles of international law to official communications of a diplomatic mission.

(b) Persons designated by the sending Government may serve in the capacity of its resident representatives with the consent of the receiving Government. Such designated persons shall be immune from civil and criminal process relating to words spoken or written and all acts performed by them in their official capacity and falling within their functions as such representatives, except insofar as such immunity may be expressly waived by the sending Government. While serving in a resident representative capacity, such designated persons shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by a competent judicial authority, and such persons shall enjoy immunity from seizure of personal property, immigration restrictions, and laws relating to alien registration, fingerprinting, and the registration of foreign agents.

(c) The sending Governments and their respective assets, income and other property shall be exempt from all direct taxes, except those direct taxes representing payment for specific goods and services, and shall be exempt from all customs duties and restrictions on the import or export of articles required for the official functions and personal use of their representatives and representative offices.

(d) Persons designated by the sending Government to serve in the capacity of its resident representatives shall enjoy the same taxation exemptions as are set forth in Article 34 of the Vienna Convention on Diplomatic Relations.

(e) The privileges, exemptions and immunities accorded under this Section are not for the personal benefit of the individuals concerned but are to safeguard the independent exercise of their official functions. Without prejudice to those privileges, exemptions and immunities, it is the duty of all such persons to respect the laws and regulations of the Government to which they are assigned.

Section 153

(a) Any citizen or national of the United States who, after consultation between the designating Government and the Government of the United States, is designated by the Government of Palau, the Marshall Islands or the Federated States of Micronesia as its agent, shall enjoy exemption from the requirements of the laws of the United States relating to the registration of foreign agents. The Government of the United States shall promptly comply with a request for consultation made by the prospective designating Government. During the course of the consultation, the Government of the United States may, in its discretion, and subject to the provisions of the Privacy Act, 5 U.S.C. 552a, transmit such information concerning the prospective designee as may be available to it to the prospective designating Government.

(b) Any citizen or national of the United States may be employed by the Government of Palau, the Marshall Islands or the Federated States of Micronesia to represent to foreign governments, officers or agents thereof the positions of the Government of Palau, the Marshall Islands or the Federated States of Micronesia, without regard to the provisions of 18 U.S.C. 953.

Article VI.

Environmental ProtectionSection 161

The Governments of the United States, Palau, the Marshall Islands and the Federated States of Micronesia declare that it is their policy to promote efforts to prevent or eliminate damage to the environment and biosphere and to enrich understanding of the natural resources of Palau, the Marshall Islands and the Federated States of Micronesia. In order to carry out this policy, the Government of the United States and the Governments of Palau, the Marshall Islands and the Federated States of Micronesia agree to the following mutual and reciprocal undertakings.

(a) The Government of the United States:

- (1) shall continue to apply the environmental controls in effect on the day preceding the effective date of this Compact to those of its continuing activities subject to Section 161(a)(2), unless and until those controls are modified under Sections 161(a)(3) and 161(a)(4);
- (2) shall apply the National Environmental Policy Act of 1969, 83 Stat. 852, 42 U.S.C. 4321 et seq., to its activities under the Compact and its related agreements as if Palau, the Marshall Islands and the Federated States of Micronesia were the United States;
- (3) shall comply also, in the conduct of any activity requiring the preparation of an Environmental Impact Statement under Section 161(a)(2), with standards substantively similar to those required by the following laws of the United States, taking into account the particular environments of Palau, the Marshall Islands and the Federated States of Micronesia: the Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531 et seq.; the Clean Air Act, 77 Stat. 392, 42 U.S.C. Supp. 7401 et seq.; the Clean Water Act (Federal Water Pollution Control Act), 86 Stat. 896, 33 U.S.C. 1251 et seq.; the Ocean Dumping Act (Title I of the Marine Protection, Research and Sanctuaries Act of 1972), 86 Stat. 1053, 33 U.S.C. 1411 et seq.; the Toxic Substances Control Act, 90 Stat. 2003, 15 U.S.C. 2601 et seq.; the Resources Conservation and Recovery Act of 1976, 90 Stat. 2796, 42 U.S.C. 6901 et seq.; and such other environmental protection laws of the United States as may be mutually agreed from time to time with the Government of Palau, the Marshall Islands or the Federated States of Micronesia; and

(4) shall develop, prior to conducting any activity requiring the preparation of an Environmental Impact Statement under Section 161(a)(2), appropriate mechanisms, including regulations or other judicially reviewable standards and procedures, to regulate its activities governed by Section 161(a)(3) in Palau, the Marshall Islands and the Federated States of Micronesia in a manner appropriate to the special governmental relationship set forth in this Compact. The agencies of the Government of the United States designated by law to administer the laws set forth in Section 161(a)(3) shall participate as appropriate in the development of any regulation, standard or procedure under this Section, and the Government of the United States shall provide the affected Government of Palau, the Marshall Islands or the Federated States of Micronesia with the opportunity to comment during such development.

(b) The Governments of Palau, the Marshall Islands and the Federated States of Micronesia shall develop standards and procedures to protect their environments.. As a reciprocal obligation to the undertakings of the Government of the United States under this Article, the Governments of Palau, the Marshall Islands and the Federated States of Micronesia, taking into account their particular environments, shall develop standards for environmental protection substantively similar to those required of the Government of the United States by Section 161(a)(3) prior to their conducting activities in Palau, the Marshall Islands and the Federated States of Micronesia, respectively, substantively equivalent to activities conducted there by the Government of the United States and, as a further reciprocal obligation, shall enforce those standards.

(c) Section 161(a), including any standard or procedure applicable thereunder, and Section 161(b) may be modified or superseded in whole or in part by agreement of the Government of the United States and the Government of Palau, the Marshall Islands or the Federated States of Micronesia.

(d) In the event that an Environmental Impact Statement is no longer required under the laws of the United States for major federal actions significantly affecting the quality of the human environment, the regulatory regime established under Sections 161(a)(3) and 161(a)(4) shall continue to apply to such activities of the Government of the United States until amended by mutual agreement.

(e) The President of the United States may exempt any of the activities of the Government of the United States under this Compact and its related agreements from any environmental standard procedure which may be applicable under Sections 161(a)(3) and 161(a)(4) if the President determines it to be in the paramount

interest of the Government of the United States to do so, consistent with Title Three of this Compact and the obligations of the Government of the United States under international law. Prior to any decision pursuant to this subsection, the views of the affected Government of Palau, the Marshall Islands or the Federated States of Micronesia shall be sought and considered to the extent practicable. If the President grants such an exemption, to the extent practicable a report with his reasons for granting such exemption shall be given promptly to the affected Government.

(f) The laws of the United States referred to in Section 161(a)(3) shall apply to the activities of the Government of the United States under this Compact and its related agreements only to the extent provided for in this Section.

Section 162

The Government of Palau, the Marshall Islands or the Federated States of Micronesia may bring an action for judicial review of any administrative agency action or any activity of the Government of the United States pursuant to Sections 161(a), 161(d) or 161(e) or for enforcement of the obligations of the Government of the United States arising thereunder. The United States District Court for the District of Hawaii and the United States District Court for the District of Columbia shall have jurisdiction over such action or activity, and over actions brought under Section 172(b) which relate to the activities of the Government of the United States and its officers and employees, governed by Section 161, provided that:

(a) such actions may only be civil actions for any appropriate civil relief other than punitive damages against the Government of the United States or, where required by law, its officers in their official capacity; no criminal actions may arise under this Section;

(b) actions brought pursuant to this Section may be initiated only by the Government concerned;

(c) administrative agency actions arising under Section 161 shall be reviewed pursuant to the standard of judicial review set forth in 5 U.S.C. 706;

(d) the District Court shall have jurisdiction to issue all necessary processes, and the Government of the United States agrees to submit itself to the jurisdiction of the court; decisions of the District Court shall be reviewable in the United States Court of Appeals for the Ninth Circuit or the United States Court of Appeals for the District of Columbia, respectively, or in the United States Supreme Court as provided by the laws of the United States;

(e) the judicial remedy provided in this Section shall be the exclusive remedy for the judicial review or enforcement of the obligations of the Government of the United States under this Article and actions brought under Section 172(b) which relate to the activities of the Government of the United States and its officers and employees governed by Section 161; and

(f) in actions pursuant to this Section, the Governments of Palau, the Marshall Islands and the Federated States of Micronesia shall be treated as if they were United States citizens.

Section 163

(a) For the purpose of gathering data necessary to study the environmental effects of activities of the Government of the United States subject to the requirements of this Article, the Governments of Palau, the Marshall Islands and the Federated States of Micronesia shall be granted access to facilities operated by the Government of the United States in Palau, the Marshall Islands and the Federated States of Micronesia, to the extent necessary for this purpose, except to the extent such access would unreasonably interfere with the exercise of the authority and responsibility of the Government of the United States under Title Three.

(b) The Government of the United States, in turn, shall be granted access to Palau, the Marshall Islands or the Federated States of Micronesia for the purpose of gathering data necessary to discharge its obligations under this Article, except to the extent such access would unreasonably interfere with the exercise of the authority and responsibility of the Government of Palau, the Marshall Islands or the Federated States of Micronesia under Title One, and to the extent necessary for this purpose shall be granted access to documents and other information to the same extent similar access is provided those Governments under the Freedom of Information Act, 5 U.S.C. 552.

(c) The Governments of Palau, the Marshall Islands and the Federated States of Micronesia shall not impede efforts by the Government of the United States to comply with applicable standards and procedures.

Article VII

General Legal ProvisionsSection 171

Except as provided in this Compact or its related agreements, the application of the laws of the United States to the Trust Territory of the Pacific Islands by virtue of the Trusteeship Agreement ceases with respect to Palau, the Marshall Islands and the Federated States of Micronesia as of the effective date of this Compact.

Section 172

(a) Every citizen of Palau, the Marshall Islands or the Federated States of Micronesia who is not a resident of the United States shall enjoy the rights and remedies under the laws of the United States enjoyed by any non-resident alien.

(b) The Governments of Palau, the Marshall Islands and the Federated States of Micronesia and every citizen of Palau, the Marshall Islands or the Federated States of Micronesia shall be considered a "person" within the meaning of the Freedom of Information Act, 5 U.S.C. 552, and of the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. 701-706, except that only the Government of Palau, the Marshall Islands or the Federated States of Micronesia may seek judicial review under the Administrative Procedure Act or judicial enforcement under the Freedom of Information Act when such judicial review or enforcement relates to the activities of the Government of the United States governed by Sections 161 and 162.

Section 173

The Governments of the United States, Palau, the Marshall Islands and the Federated States of Micronesia agree to adopt and enforce such measures, consistent with this Compact and its related agreements, as may be necessary to protect the personnel, property, installations, services, programs and official archives and documents maintained by the Government of the United States in Palau, the Marshall Islands and the Federated States of Micronesia pursuant to this Compact and its related agreements and by those Governments in the United States pursuant to this Compact and its related agreements.

Section 174

Except as otherwise provided in this Compact and its related agreements:

(a) The Governments of Palau, the Marshall Islands and the Federated States of Micronesia shall be immune from the jurisdiction of the courts of the United States, and the Government of the United States shall be immune from the jurisdiction of the courts of Palau, the Marshall Islands and the Federated States of Micronesia.

(b) The Government of the United States accepts responsibility for and shall pay:

- (1) any unpaid money judgment rendered by the High Court of the Trust Territory of the Pacific Islands against the Government of the Trust Territory of the Pacific Islands or the Government of the United States with regard to any cause of action arising as a result of acts or omissions of the Government of the Trust Territory of the Pacific Islands or the Government of the United States prior to the effective date of this Compact;
- (2) any claim settled by the claimant and the Government of the Trust Territory of the Pacific Islands but not paid as of the effective date of this Compact; and
- (3) settlement of any administrative claim or of any action before a court of the Trust Territory of the Pacific Islands, pending as of the effective date of this Compact, against the Government of the Trust Territory of the Pacific Islands or the Government of the United States, arising as a result of acts or omissions of the Government of the Trust Territory of the Pacific Islands or the Government of the United States

(c) Any claim not referred to in Section 174(b) and arising from an act or omission of the Government of the Trust Territory of the Pacific Islands or the Government of the United States prior to the effective date of this Compact shall be adjudicated in the same manner as a claim adjudicated according to Section 174(d). In any claim against the Government of the Trust Territory of the Pacific Islands, the Government of the United States shall stand in the place of the Government of the Trust Territory of the Pacific Islands. A judgment on any claim referred to in Section 174(b) or this subsection, not otherwise satisfied by the Government of the United States, may be presented for certification to the United States Court of Appeals for the Federal Circuit, or its successor court, which shall have jurisdiction therefor, notwithstanding the provisions of 28 U.S.C. 1502, and which court's decisions shall be reviewable as provided by the laws of the United States. The United States Court of Appeals for the Federal Circuit shall certify such judgment, and order payment thereof, unless it finds, after a hearing, that such judgment is manifestly erroneous as to law or fact, or manifestly excessive. In either of such cases the United States Court of Appeals for the Federal Circuit shall have jurisdiction to modify such judgment.

(d) The Governments of Palau, the Marshall Islands and the Federated States of Micronesia shall not be immune from the jurisdiction of the courts of the United States, and the Government of the United States shall not be immune from the jurisdiction of the courts of Palau, the Marshall Islands and the Federated States of Micronesia in any case in which the action is based on a commercial activity of the defendant Government where the action is brought, or in a case in which damages are sought for personal injury or death or damage to or loss of property occurring where the action is brought.

Section 175

A separate agreement, which shall come into effect simultaneously with this Compact, shall be concluded between the Government of the United States and the Governments of Palau, the Marshall Islands and the Federated States of Micronesia regarding mutual assistance and cooperation in law enforcement matters including the pursuit, capture, imprisonment and extradition of fugitives from justice and the transfer of prisoners. The separate agreement shall have the force of law. In the United States, the laws of the United States governing international extradition, including 18 U.S.C. 3184, 3186 and 3188-3195, shall be applicable to the extradition of fugitives under the separate agreement, and the laws of the United States governing the transfer of prisoners, including 18 U.S.C. 4100-4115, shall be applicable to the transfer of prisoners under the separate agreement.

Section 176

The Governments of Palau, the Marshall Islands and the Federated States of Micronesia confirm that final judgments in civil cases rendered by any court of the Trust Territory of the Pacific Islands shall continue in full force and effect, subject to the constitutional power of the courts of Palau, the Marshall Islands and the Federated States of Micronesia to grant relief from judgments in appropriate cases.

Section 177

(a) The Government of the United States accepts the responsibility for compensation owing to citizens of the Marshall Islands, the Federated States of Micronesia or Palau for loss or damage to property and person of the citizens of the Marshall Islands, the Federated States of Micronesia or Palau, resulting from the nuclear testing program which the Government of the United States conducted in the Northern Marshall Islands between June 30, 1946, and August 18, 1958.

(b) The Government of the United States and the Government of the Marshall Islands shall set forth in a separate agreement provisions for the just and adequate settlement of all such claims which have arisen in regard to the Marshall Islands and its citizens and which have not as yet been compensated or which in

the future may arise, for the continued administration by the Government of the United States of direct radiation related medical surveillance and treatment programs and radiological monitoring activities and for such additional programs and activities as may be mutually agreed, and for the assumption by the Government of the Marshall Islands of responsibility for enforcement of limitations on the utilization of affected areas developed in cooperation with the Government of the United States and for the assistance by the Government of the United States in the exercise of such responsibility as may be mutually agreed. This separate agreement shall come into effect simultaneously with this Compact and shall remain in effect in accordance with its own terms.

(c) The Government of the United States shall provide to the Government of the Marshall Islands, on a grant basis, the amount of \$150 million to be paid and distributed in accordance with the separate agreement referred to in this Section, and shall provide the services and programs set forth in this separate agreement, the language of which is incorporated into this Compact.

Section 178

(a) The federal agencies of the Government of the United States which provide the services and related programs in Palau, the Marshall Islands or the Federated States of Micronesia pursuant to Articles II and III of Title Two are authorized to settle and pay tort claims arising in Palau, the Marshall Islands or the Federated States of Micronesia from the activities of such agencies or from the acts or omissions of the employees of such agencies. Except as provided in Section 178(b), the provisions of 28 U.S.C. 2672 and 31 U.S.C. 1304 shall apply exclusively to such administrative settlements and payments.

(b) Claims under Section 178(a) which cannot be settled under Section 178(a) shall be disposed of exclusively in accordance with Article II of Title Four. Arbitration awards rendered pursuant to this subsection shall be paid out of funds under 31 U.S.C. 1304.

(c) The Government of the United States and the Government of Palau, the Marshall Islands or the Federated States of Micronesia shall, in the separate agreements referred to in Section 232, provide for:

- (1) the administrative settlement of claims referred to in Section 178(a), including designation of local agents in Palau, the Marshall Islands and each State of the Federated States of Micronesia; such agents to be empowered to accept, investigate and settle such claims, in a timely manner, as provided in such separate agreements; and

(2) arbitration, referred to in Section 178(b), in a timely manner, at a site convenient to the claimant, in the event a claim is not otherwise settled pursuant to Section 178(a).

(d) The provisions of Section 174(d) shall not apply to claims covered by this Section.

ARTICLE V

General ProvisionsSection 351

(a) The Government of the United States and the Government of Palau, the Marshall Islands or the Federated States of Micronesia shall establish three Joint Committees empowered to consider disputes under the implementation of this Title and its related agreements.

(b) The membership of each Joint Committee shall comprise selected senior officials of each of the two participating Governments. The senior United States military commander in the Pacific area shall be the senior United States member of each Joint Committee. For the meetings of each Joint Committee, each of the two participating Governments may designate additional or alternate representatives as appropriate for the subject matter under consideration.

(c) Unless otherwise mutually agreed, each Joint Committee shall meet semi-annually at a time and place to be designated, after appropriate consultation, by the Government of the United States. A Joint Committee also shall meet promptly upon request of either of its members. Upon notification by the Government of the United States, the Joint Committees so notified shall meet promptly in a combined session to consider matters within the jurisdiction of more than one Joint Committee. Each Joint Committee shall follow such procedures, including the establishment of functional subcommittees, as the members may from time to time agree.

(d) Unresolved issues in each Joint Committee shall be referred to the Governments concerned for resolution, and the Government of Palau, the Marshall Islands or the Federated States of Micronesia shall be afforded, on an expeditious basis, an opportunity to raise its concerns with the United States Secretary of Defense personally regarding any unresolved issue which threatens its continued association with the Government of the United States.

Section 352

In the exercise of its authority and responsibility under Title Three, the Government of the United States shall accord due respect to the authority and responsibility of the Governments of Palau, the Marshall Islands and the Federated States of Micronesia under Titles One, Two and Four and to their responsibility to assure the well-being of their peoples.

Section 353

(a) The Government of the United States shall not include any of the Governments of Palau, the Marshall Islands and the Federated States of Micronesia as named parties to a formal declaration of war, without their respective consent.

(b) Absent such consent, this Compact is without prejudice, on the ground of belligerence or the existence of a state of war, to any claims for damages which are advanced by the citizens, nationals or Government of Palau, the Marshall Islands or the Federated States of Micronesia, which arise out of armed conflict subsequent to the effective date of this Compact and which are:

- (1) petitions to the Government of the United States for redress; or
- (2) claims in any manner against the government, citizens, nationals or entities of any third country.

(c) Petitions under Section 353(b)(1) shall be treated as if they were made by citizens of the United States.

Section 354

(a) Notwithstanding any other provision of this Compact, the provisions of this Title are binding from the effective date of this Compact for a period of fifty years between the Government of the United States and the Government of Palau and for a period of fifteen years between the Government of the United States and the Governments of the Marshall Islands and the Federated States of Micronesia and thereafter as mutually agreed or in accordance with Section 231, unless earlier terminated by mutual agreement pursuant to Section 441, or amended pursuant to Article III of Title Four.

(b) The Government of the United States recognizes, in view of the special relationship between the Government of the United States and the Governments of Palau, the Marshall Islands and the Federated States of Micronesia, and in view of the existence of separate agreements with each of them pursuant to Sections 321 and 323, that, even if this Title should terminate, any attack on Palau, the Marshall Islands or the Federated States of Micronesia during the period in which such separate agreements are in effect, would constitute a threat to the peace and security of the entire region and a danger to the United States. In the event of such an attack, the Government of the United States would take action to meet the danger to the United States and to Palau, the Marshall Islands and the Federated States of Micronesia in accordance with its constitutional processes.

TITLE FOUR
GENERAL PROVISIONS

Article I

Approval and Effective Date

Section 411

This Compact shall come into effect upon mutual agreement between the Government of the United States, acting in fulfillment of its responsibilities as Administering Authority of the Trust Territory of the Pacific Islands, and the Government of Palau, the Marshall Islands or the Federated States of Micronesia and subsequent to completion of the following:

(a) Approval by the Government of Palau, the Marshall Islands or the Federated States of Micronesia in accordance with its constitutional processes;

(b) Conduct of the plebiscite referred to in Section 412; and

(c) Approval by the Government of the United States in accordance with its constitutional processes.

Section 412

A plebiscite shall be conducted in each of Palau, the Marshall Islands and the Federated States of Micronesia for the free and voluntary choice by the peoples of the Trust Territory of the Pacific Islands of their future political status through informed and democratic processes. Palau, the Marshall Islands and the Federated States of Micronesia shall each be considered a voting jurisdiction, and the plebiscite shall be conducted under fair and equitable standards in each voting jurisdiction. The Administering Authority of the Trust Territory of the Pacific Islands, after consultation with the Governments of Palau, the Marshall Islands and the Federated States of Micronesia, shall fix the date on which the plebiscite shall be called in each voting jurisdiction. The plebiscite shall be called jointly by the Administering Authority of the Trust Territory of the Pacific Islands and the other Signatory Government concerned. The results of the plebiscite in each voting jurisdiction shall be determined by a majority of the valid ballots cast in that voting jurisdiction.

Article II

Conference and Dispute ResolutionSection 421

The Government of the United States shall confer promptly at the request of the Government of Palau, the Marshall Islands or the Federated States of Micronesia and any of those Governments shall confer promptly at the request of the Government of the United States on matters relating to the provisions of this Compact or of its related agreements.

Section 422

In the event the Government of the United States, or the Government of Palau, the Marshall Islands or the Federated States of Micronesia, after conferring pursuant to Section 421, determines that there is a dispute and gives written notice thereof, the Governments which are parties to the dispute shall make a good faith effort to resolve the dispute among themselves.

Section 423

If a dispute between the Government of the United States and the Government of Palau, the Marshall Islands or the Federated States of Micronesia cannot be resolved within 90 days of written notification in the manner provided in Section 422, either party to the dispute may refer it to arbitration in accordance with Section 424.

Section 424

Should a dispute be referred to arbitration as provided for in Section 423, an Arbitration Board shall be established for the purpose of hearing the dispute and rendering a decision which shall be binding upon the two parties to the dispute unless the two parties mutually agree that the decision shall be advisory. Arbitration shall occur according to the following terms:

(a) An Arbitration Board shall consist of a Chairman and two other members, each of whom shall be a citizen of a party to the dispute. Each of the two Governments which is a party to the dispute shall appoint one member to the Arbitration Board. If either party to the dispute does not fulfill the appointment requirements of this Section within 30 days of referral of the dispute to arbitration pursuant to Section 423, its member on the Arbitration Board shall be selected from its own standing list by the other party to the dispute. Each Government shall maintain a standing list of 10 candidates. The parties to the dispute shall jointly appoint a Chairman within 15 days after selection of the other members of the Arbitration Board. Failing agreement on a Chairman, the Chairman shall be chosen by lot from the standing list.

of the parties to the dispute within 5 days after such failure.

(b) The Arbitration Board shall have jurisdiction to hear and render its final determination on all disputes arising exclusively under Articles I, II, III, IV and V of Title One, Title Two, Title Four and their related agreements.

(c) Each member of the Arbitration Board shall have one vote. Each decision of the Arbitration Board shall be reached by majority vote.

(d) In determining any legal issue, the Arbitration Board may have reference to international law and, in such reference, shall apply as guidelines the provisions set forth in Article 38 of the Statute of the International Court of Justice.

(e) The Arbitration Board shall adopt such rules for its proceedings as it may deem appropriate and necessary, but such rules shall not contravene the provisions of this Compact. Unless the parties provide otherwise by mutual agreement, the Arbitration Board shall endeavor to render its decision within 30 days after the conclusion of arguments. The Arbitration Board shall make findings of fact and conclusions of law and its members may issue dissenting or individual opinions. Except as may be otherwise decided by the Arbitration Board, one-half of all costs of the arbitration shall be borne by the Government of the United States and the remainder shall be borne by the other party to the dispute.

Article III

AmendmentSection 431

The provisions of this Compact may be amended as to all of the Governments of Palau, the Marshall Islands and the Federated States of Micronesia and as to the Government of the United States at any time by mutual agreement.

Section 432

The provisions of this Compact may be amended as to any one of the Governments of Palau, the Marshall Islands or the Federated States of Micronesia and as to the Government of the United States at any time by mutual agreement. The effect of any amendment made pursuant to this Section shall be restricted to the relationship between the Governments agreeing to such amendment, but the other Governments signatory to this Compact shall be notified promptly by the Government of the United States of any such amendment.

Article IV

Termination

Section 441

This Compact may be terminated as to any one of the Governments of Palau, the Marshall Islands or the Federated States of Micronesia and as to the Government of the United States by mutual agreement and subject to Section 451.

Section 442

This Compact may be terminated by the Government of the United States as to the Government of Palau, the Marshall Islands or the Federated States of Micronesia subject to Section 452, such termination to be effective on the date specified in the notice of termination by the Government of the United States but not earlier than six months following delivery of such notice. The time specified in the notice of termination may be extended.

Section 443

This Compact shall be terminated, pursuant to their respective constitutional processes, by the Government of Palau, the Marshall Islands or the Federated States of Micronesia subject to Section 453 if the people represented by such Government vote in a plebiscite to terminate. Such Government shall notify the Government of the United States of its intention to call such a plebiscite which shall take place not earlier than three months after delivery of such notice. The plebiscite shall be administered by such Government in accordance with its constitutional and legislative processes, but the Government of the United States may send its own observers and invite observers from a mutually agreed party. If a majority of the valid ballots cast in the plebiscite favors termination, such Government shall, upon certification of the results of the plebiscite, give notice of termination to the Government of the United States, such termination to be effective on the date specified in such notice but not earlier than three months following the date of delivery of such notice. The time specified in the notice of termination may be extended.

Article V
Survivability

Section 451

Should termination occur pursuant to Section 441, economic assistance by the Government of the United States shall continue on mutually agreed terms:

Section 452

(a) Should termination occur pursuant to Section 442, the following provisions of this Compact shall remain in full force and effect until the fiftieth anniversary of the effective date of this Compact between the Government of the United States and the Government of Palau and until the fifteenth anniversary of the effective date of this Compact between the Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia and thereafter as mutually agreed:

- (1) Article VI and Sections 172, 173, 176 and 177 of Title One;
- (2) Article I and Section 233 of Title Two;
- (3) Title Three; and
- (4) Articles II, III, V and VI of Title Four.

(b) The Government of the United States shall also provide the Government as to which termination occurs pursuant to Section 442 with either the programs or services provided pursuant to Article II of Title Two at the time of termination, or their equivalent, as determined by the Government of the United States. Such assistance shall continue until the fifteenth anniversary of the effective date of this Compact, and thereafter as mutually agreed.

Section 453

(a) Should termination occur pursuant to Section 443, the following provisions of this Compact shall remain in full force and effect until the fiftieth anniversary of the effective date of this Compact between the Government of the United States and the Government of Palau and until the fifteenth anniversary of the effective date of this Compact between the Government of the United States and the Government of the Marshall Islands or the Federated States of Micronesia and thereafter as mutually agreed:

- (1) Article VI and Sections 172, 173, 176 and 177 Title One;
- (2) Title Three; and

(3) Article II, III, V and VI of Title Four.

(b) Upon receipt of notice of termination pursuant to Section 443, the Government of the United States and the Government so terminating shall promptly consult with regard to their future relationship. These consultations shall determine the level of economic assistance which the Government of the United States shall provide to the Government so terminating for the period ending on the fifteenth anniversary of the effective date of this Compact provided that the annual amounts specified in Sections 211, 212(b), 214, 215 and 216 shall continue without diminution. Such amounts, with the exception of those specified in Section 216, shall be adjusted according to the formula set forth in Section 217. The level of economic assistance provided by the Government of the United States to the Government of Palau, should it terminate after that period, shall be as set forth in the separate agreement referred to in Section 211(a)(2).

Section 454.

Notwithstanding any other provision of this Compact:

(a) The Government of the United States reaffirms its continuing interest in promoting the long-term economic advancement and self-sufficiency of the peoples of Palau, the Marshall Islands and the Federated States of Micronesia; and

(b) The separate agreements referred to in Article II of Title Three shall remain in effect in accordance with their terms which shall also determine the duration of Section 213.

Article VI

Definition of TermsSection 461

For the purpose of this Compact only and without prejudice to the views of the Government of the United States or the Government of Palau, the Marshall Islands or the Federated States of Micronesia as to the nature and extent of the jurisdiction under international law of any of them, the following terms shall have the following meanings:

(a) "Trust Territory of the Pacific Islands" means the area established in the Trusteeship Agreement consisting of the administrative districts of Kosrae, Yap, Palau, Ponape, the Marshall Islands and Truk as described in Title One, Trust Territory Code, Section 1, in force on January 1, 1979. This term does not include the area of the Northern Mariana Islands.

(b) "Trusteeship Agreement" means the agreement setting forth the terms of trusteeship for the Trust Territory of the Pacific Islands, approved by the Security Council of the United Nations April 2, 1947, and by the United States July 18, 1947, entered into force July 18, 1947, 61 Stat. 3301, T.I.A.S. 1665, 8 U.N.T.S. 189.

(c) "Palau", "the Marshall Islands" and "the Federated States of Micronesia" are used in a geographic sense and include the land and water areas to the outer limits of the territorial sea and the air space above such areas as now or hereafter recognized by the Government of the United States.

(d) "Government of Palau" means the Government established and organized by the Constitution of Palau including all the political subdivisions and entities comprising that Government.

"Government of the Marshall Islands" means the Government established and organized by the Constitution of the Marshall Islands including all the political subdivisions and entities comprising that Government.

"Government of the Federated States of Micronesia" means the Government established and organized by the Constitution of the Federated States of Micronesia including all the political subdivisions and entities comprising that Government.

(e) The following terms shall be defined consistent with the 1976 Edition of the Radio Regulations of the International Telecommunications Union (ISBN 92-61-0081-5) as follows:

(1) "Radio Communications" means telecommunication by means of radio waves.

- (2) "Station" means one or more transmitters or receivers or a combination of transmitters and receivers, including the accessory equipment, necessary at one location for carrying on a radio communication service; each station shall be classified by the service in which it operates permanently or temporarily.
- (3) "Broadcasting Service" means a radio communication service in which the transmissions are intended for direct reception by the general public, and which may include sound transmissions, television transmissions or other types of transmissions.
- (4) "Broadcasting Station" means a station in the broadcasting service.

(f) "Frequency Assignment" means the same as 'Frequency Assignment' means in the 1976 Edition of the Radio Regulations of the International Telecommunications Union (ISBN 92-61-0081-5).

(g) "Habitual Residence" means a place of general abode or a principal, actual dwelling place of a continuing or lasting nature; provided however, that this term shall not apply to the residence of any person who entered the United States for the purpose of full-time studies as long as such person maintains that status, or who has been physically present in the United States, Palau, the Marshall Islands or the Federated States of Micronesia for less than one year, or who is a dependent of a resident representative, as described in Section 152.

(h) For the purposes of Article IV of Title One of this Compact:

- (1) "Actual Residence" means physical presence in Palau, the Marshall Islands or the Federated States of Micronesia during eighty-five percent of the period of residency required by Section 141(a)(3); and
- (2) "Certificate of Actual Residence" means a certificate issued to a naturalized citizen by the Government which has naturalized him stating that the citizen has complied with the actual residence requirement of Section 141(a)(3).

(i) "Military Areas and Facilities" means those areas and facilities in Palau, the Marshall Islands or the Federated States of Micronesia reserved or acquired by the Government of Palau, the Marshall Islands or the Federated States of Micronesia for use by the Government of the United States, as set forth in the separate agreements referred to in Section 321.

(j) "Capital Account" means, for each year of the Compact, those portions of the total grant assistance provided in Article

I of Title Two, adjusted by Section 217, which are to be obligated for:

- (1) the construction or major repair of capital infrastructure; or
- (2) public and private sector projects identified in the official overall economic development plan.

(k) "Current Account" means, for each year of the Compact, those portions of the total grant assistance provided in Article I of Title Two, adjusted by Section 217, which are to be obligated for recurring operational activities including infrastructure maintenance as identified in the annual budget justifications submitted yearly to the Government of the United States.

(l) "Official Overall Economic Development Plan" means the documented program of annual development which identifies the specific policy and project activities necessary to achieve a specified set of economic goals and objectives during the period of free association, consistent with the economic assistance authority in Title Two. Such a document should include an analysis of population trends, manpower requirements, social needs, gross national product estimates, resource utilization, infrastructure needs and expenditures, and the specific private sector projects required to develop the local economy of Palau, the Marshall Islands or the Federated States of Micronesia. Project identification should include initial cost estimates, project purposes related to specific development goals and objectives.

(m) "Tariff Schedules of the United States" means the Tariff Schedules of the United States as amended from time to time and as promulgated pursuant to United States law and includes the Tariff Schedules of the United States Annotated (TSUSA), as amended.

(n) "Vienna Convention on Diplomatic Relations" means the Vienna Convention on Diplomatic Relations, done April 18, 1961, 23 U.S.T. 3227, T.I.A.S. 7502, 500 U.N.T.S. 95.

Section 462

The Government of the United States and the Government of Palau, the Marshall Islands or the Federated States of Micronesia, as appropriate, shall conclude related agreements which shall come into effect and shall survive in accordance with their terms, as follows:

(a) Agreement Regarding the Provision of Telecommunication Services by the Government of the United States to Palau, the Marshall Islands and the Federated States of Micronesia Concluded Pursuant to Section 131 of the Compact of Free Association;

(b) Agreement Regarding the Operation of Telecommunication Services of the Government of the United States in Palau, the Marshall Islands and the Federated States of Micronesia Concluded Pursuant to Section 132 of the Compact of Free Association;

(c) Agreement on Extradition, Mutual Assistance in Law Enforcement Matters and Penal Sanctions Concluded Pursuant to Section 175 of the Compact of Free Association;

(d) Agreement Between the Government of the United States and the Government of the Marshall Islands for the Implementation of Section 177 of the Compact of Free Association;

(e) Agreement Regarding United States Economic Assistance to the Government of Palau Concluded Pursuant to Section 211(a)(2) of the Compact of Free Association;

(f) Agreement Regarding Construction Projects in Palau Concluded Pursuant to Section 212(a) of the Compact of Free Association;

(g) Federal Programs and Services Agreement Concluded Pursuant to Article II of Title Two and Section 232 of the Compact of Free Association;

(h) Agreement Concluded Pursuant to Section 234 of the Compact of Free Association;

(i) Agreement Regarding the Military Use and Operating Rights of the Government of the United States in Palau Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association;

(j) Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Marshall Islands Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association;

(k) Agreement Regarding the Military Use and Operating Rights of the Government of the United States in the Federated States of Micronesia Concluded Pursuant to Sections 227, 321 and 323 of the Compact of Free Association;

(l) Status of Forces Agreement Concluded Pursuant to Section 323 of the Compact of Free Association;

(m) Agreement Between the Government of the United States and the Government of the Federated States of Micronesia Regarding Friendship, Cooperation and Mutual Security Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association; and

(n) Agreement Between the Government of the United States and the Government of the Marshall Islands Regarding Mutual Security Concluded Pursuant to Sections 321 and 323 of the Compact of Free Association.

Section 463

(a) Except as set forth in Section 463(b), any reference in this Compact to a provision of the United States Code or the Statutes at Large of the United States constitutes the incorporation of the language of such provision into this Compact, as such provision was in force on January 1, 1980.

(b) Any reference in Article VI of Title One and Sections 131, 174, 175, 178 and 342 to a provision of the United States Code or the Statutes at Large of the United States or to the Privacy Act, the Freedom of Information Act or the Administrative Procedure Act constitutes the incorporation of the language of such provision into this Compact as such provision is in force on the effective date of this Compact or as it may be amended thereafter on a non-discriminatory basis according to the constitutional processes of the United States.

Article VII

Concluding Provisions

Section 471

(a) The Government of the United States and the Governments of Palau, the Marshall Islands and the Federated States of Micronesia agree that they have full authority under their respective Constitutions to enter into this Compact and its related agreements and to fulfill all of their respective responsibilities in accordance with the terms of this Compact and its related agreements. The Governments pledge that they are so committed.

(b) Each of the Governments of the United States, Palau, the Marshall Islands and the Federated States of Micronesia shall take all necessary steps, of a general or particular character, to ensure, not later than the effective date of this Compact, the conformity of its laws, regulations and administrative procedures with the provisions of this Compact.

(c) Without prejudice to the effects of this Compact under international law, this Compact has the force and effect of a statute under the laws of the United States.

Section 472

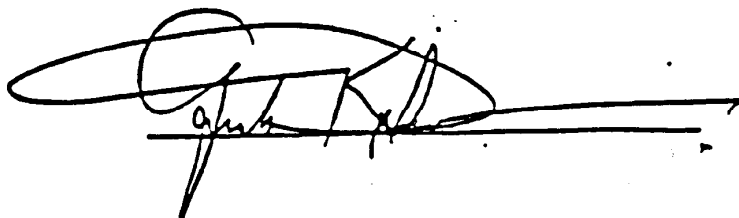
This Compact may be accepted, by signature or otherwise, by the Government of the United States, the Government of Palau, the Government of the Marshall Islands, and the Government of the Federated States of Micronesia. Each Government accepting this Compact shall possess an original English language version.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Compact of Free Association which shall come into effect in accordance with its terms between the Government of the United States and each of the other Governments signatory to this Compact.

COMPACT OF FREE ASSOCIATION

DONE AT Majuro, Marshall Islands, this 25th day of
June, one thousand, nine hundred eighty-three

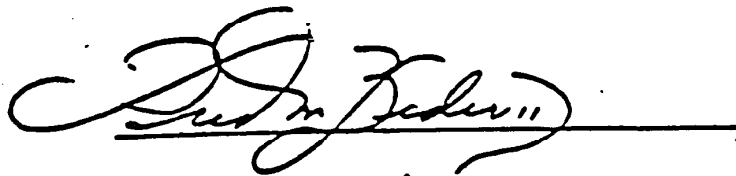
FOR THE GOVERNMENT
OF
THE MARSHALL ISLANDS



A handwritten signature in dark ink, appearing to be 'J. K. R.', is written over a horizontal line. The signature is stylized with a large loop at the beginning.

DONE AT Majuro, Marshall Islands, this 25th day of
June, one thousand, nine hundred eighty-three

FOR THE GOVERNMENT
OF
THE UNITED STATES OF AMERICA



A handwritten signature in dark ink, appearing to be 'D. J. Federico', is written over a horizontal line. The signature is highly stylized with large, flowing loops.

DONE AT Washington, D.C., THIS 26th DAY

OF August, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

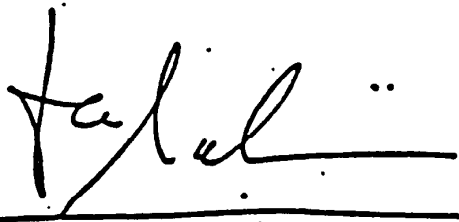
FOR THE GOVERNMENT
OF
THE UNITED STATES OF AMERICA



DONE AT Washington, D.C., THIS 26th DAY

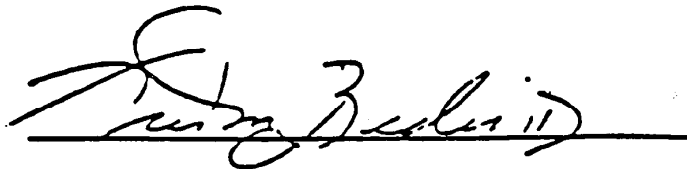
OF August, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT
OF
THE REPUBLIC OF PALAU



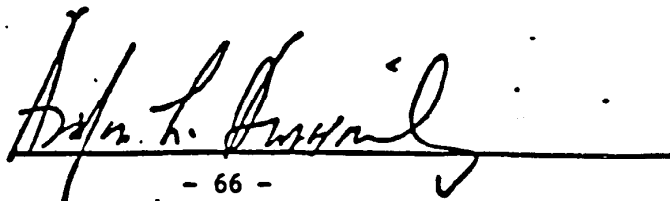
DONE AT Honolulu, Hawaii, THIS 1st DAY
OF October, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT
OF
THE UNITED STATES OF AMERICA



DONE AT Honolulu, Hawaii, THIS 1st DAY
OF October, ONE THOUSAND, NINE HUNDRED EIGHTY-TWO

FOR THE GOVERNMENT
OF
THE FEDERATED STATES OF MICRONESIA



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